

Statement of Environmental Effects



44 Bower Street, Manly

**Demolition of Existing Structures and
Construction of New 2-Storey Dwelling**

by Madeleine Blanchfield Architects

AP 723

February 2020

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Statement of Environmental Effects for
submission to Northern Beaches Council

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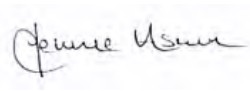
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Signature 

Date: 26 February 2020

Report Reviewed by: Jennie Askin

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Date: 14 February 2020

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1. SUMMARY

This statement is to be read in conjunction with plans prepared by Madeleine Blanchfield Architects dated 28 February 2020.

It is proposed to demolish the existing structures and construct a new 2-storey dwelling with a swimming pool to the rear.

The proposal has been designed to relate to its site and to the streetscape in terms of appearance, envelope, setbacks, bulk and scale.

The preparation of this Statement is pursuant to Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 50 of the Environmental Planning and Assessment Regulation 2000. It provides for an assessment of the development proposal, having regard to relevant legislation, contextual analysis, social, economic and environmental impacts, potential amenity impacts on the surrounding locality and the measures proposed to mitigate impacts.

This statement assesses any numeric non-compliance as acceptable on merit, resulting in no adverse impacts and in compliance with all relevant DCP and LEP objectives.

2. THE SITE

The subject site, being Lot 24 DP 8075 and known as No.40 Bower Street, Manly, is located on the northern side of Bower Street, just before the road turns sharply southwards.

The site is marginally irregular in shape and has a frontage of 15.28m to Bower Street. The depth of the site is 45.72m along the eastern boundary and 45.72m along the western side boundary. The site is 15.28m wide at the rear where it adjoins a walkway that runs from Cabbage Bay Tree to Shelly Beach. The area of the site is 697sqm.

The site slopes from south to north, with a fall of approximately 25m from the front boundary (south) to the rear boundary (north).

The site has expansive views over Cabbage Tree Bay and Shelly Beach.

Refer to **Figure 1** and **Figure 2** below for a location map and an aerial map of the subject site.

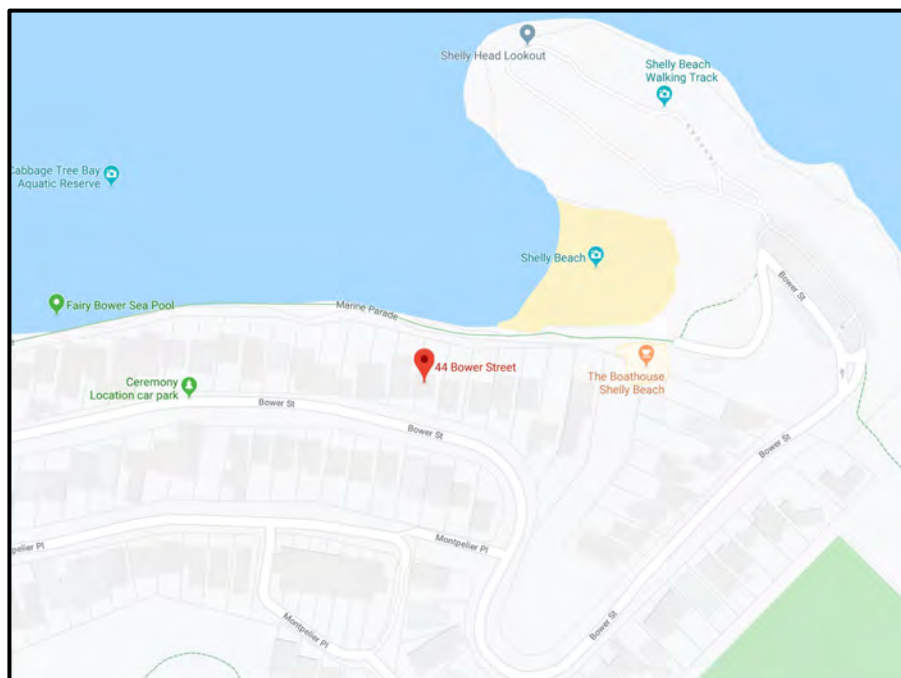


Figure 1: Location Map (Source: Google Maps, 2020)



Figure 2: Aerial Map of Subject Site and Surrounding Development (Source: Google Maps, 2020)

On the site is a 2-storey dwelling with a hardstand car parking area for 2 vehicles provided within the front setback of the dwelling.

The existing dwelling includes a large dominant roof form facing the street and 2-storey walls located close to the side boundaries.

A current development approval includes a new double garage located at the street frontage (not yet constructed).

Refer to **Figure 3** and **Figure 4** below for photos of the subject site.



Figure 3: Front of the subject site as viewed from Bower Street



Figure 4: Rear of the dwelling on the subject site

The site is zoned E3 Environmental Management under the provisions of the Manly Local Environmental Plan (LEP) 2013.

The building is not identified as a Heritage Item and is not within a Heritage Conservation Area. Nearby heritage items include the following:

- I86 at 50 Bower Street – House;
- I87 at 101 Bower Street - House, “Bower Hall”
- I88 at 105 Bower Street - House
- I89 at 129 Bower Street - Residential flat building, “Borambil”

3. THE LOCALITY

Surrounding developments consists predominantly of detached 2- to 4-storey dwelling houses, that are stepped down to suit the fall in the land towards the north with garages located at street frontage.

Adjoining the site to the east at 42 Bower Street is a part 1-, part 2-, part 3-storey dwelling with a double garage at the street frontage.

Adjoining the site to the west at 46 Bower Street is a part 1-, part 3-storey dwelling with a single car port at the street frontage.

Refer to **Figure 5** and **Figure 12** below for photos of the subject site.



Figure 5: Subject site and 42 Bower Street adjoining the subject site to the east



Figure 6: 46 Bower Street adjoining the subject site to the west



Figure 7: Eastern façade of 46 Bower Street, adjoining the subject site to the west



Figure 8: Photograph illustrating the bulk and scale of development along the northern side of Bower Street as viewed from the headland at Shelly Beach



Figure 9: Development on the opposite side of Bower Street comprising of 2-storey dwellings set up and back from the street frontage with double garages a predominant feature of the streetscape



Figure 10: Development on the opposite side of Bower Street comprising of 2-storey dwellings set up and back from the street frontage with double garages a predominant feature of the streetscape



Figure 11: Development on the opposite side of Bower Street comprising of 2-storey dwellings set up and back from the street frontage with double garages a predominant feature of the streetscape



Figure 12: Development on the opposite side of Bower Street comprising of 2-storey dwellings set up and back from the street frontage with double garages a predominant feature of the streetscape

4. BACKGROUND

4.1 Planning History – Subject Site

Recent recorded planning history relating to the site includes the following:

- **S96 202/2016 (part 3-modification)**
Application Type: Section 455 Modifications
Section 455 (8) - Section 96 to modify approved demolition of existing dwelling and construction of a three storey dwelling – Part 3
Status: Approved
Determined: 06/02/2018 (Council Staff)
- **S96 202/2016 (part 2-modification)**
Application Type: Section 455 Modifications
Section 455 (8) - Section 96 Modification to approved Demolition of existing dwelling and construction of a three storey dwelling with front and rear terraces and lift, new swimming pool with deck, new double garage and driveway, removal of trees, landscaping and new fences – Part 2
Status: Approved
Determined: 04/10/2017
- **DA 202/2016**
Application Type: Development Application
Demolition of existing dwelling and construction of a new dwelling house.
Status: Approved
Determined: 08/02/2017 (Council Staff)
- **DA 222/2015**
Application Type: Development Application
Alterations and Additions - Alterations and additions to the existing dwelling house including rear addition, extended deck, swimming pool, pergola and retaining walls
Status: Approved
Determined: 02/12/2015 (Council Staff)
- **DA 27/2015**
Application Type: Development Application
Alterations and Additions - Alterations and additions to an existing dwelling house including internal alterations, extensions and terraces to ground floor and first floor, stairs to rear garden, new lych-gate, enlarged garage and driveway
Status: Approved by DAU
Determined: 20/05/2015

4.2 Planning History – Adjoining Site

Recent recorded planning history relating to the site includes the following:

- **42 Bower Street (adjoining the subject site to the east)**
 - **S96 102/2005 (part 2-modification)**
Application Type: Section 455 Modifications
Section 455 (8) - Section 96 to modify approved alterations and additions to existing dwelling including new swimming pool
Status: Approved Under Delegation
Determined: 13/11/2007
 - **DA 102/2005**
Application Type: Development Application
Alterations and Additions - Section 82 A Review- Alts & Adds to existing dwelling including new swimming pool
Status: Approved by Council
Determined: 07/11/2005
 - **S96 424/2001 (part 2-modification)**
Application Type: Section 455 Modifications
Section 455 (8) - Alteration and/or Additions to existing Alterations & Additions to Dwelling
Status: To be posted
Determined: 01/01/1900
 - **DA 424/2001**
Application Type: Development Application
New - New Building Dwelling
Status: Approved by DCU
Determined: 05/06/2002
- **46-48 Bower Street (adjoining the subject site to the west)**
 - **CC2018/1320**
Private - Stage 1: Driveway and tree removal - 6441-01-2018-CC
Status: In Progress
Determined: 22/10/2018
 - **1158/1998**
Application Type: Principal Certifying Authority
Interim Occupation Certificate - DA1158/98 Alts & Adds
Status: Approved by Private Certifier

-
- **DA 84/2016**
Subdivision - Two (2) Strata Subdivision of the existing dual occupancy
Status: Approved
Determined: 22/06/2016 (Council Staff)
 - **11.1998.1158.2**
Construction Certificate
Private - Section 96 to modify approved Alterations and additions to existing duplex - involving lower ground floor addition, retaining wall, new windows, deck extension and driveway - Part 2
Status: Approved by Private Certifier
Determined: 10/11/2015
 - **S96 1158/1998 (part 2-modification)**
Section 455 (8) - Section 96 to modify approved Alterations and additions to existing duplex - involving lower ground floor addition, retaining wall, new windows, deck extension and driveway - Part 2
Status: Approved by DAU
Determined: 19/06/2013
 - **CC 1158/1998**
Construction Certificate
Council - DA1158/98 Alts & Adds
Status: Approved
Determined: 03/05/2001
 - **50.2001.1300**
Bonds
Security - 46-48 Bower Street
Status: Application Lodged
 - **DA 1158/1998**
New - DA1158/98 Alts & Adds
Status: Approved
Determined: 10/06/1999

4.3 Pre DA Meeting

The matter was not the subject of a formal pre DA meeting.

5. PROPOSAL DESCRIPTION

This statement is to be read in conjunction with the following plans prepared by Madeleine Blanchfield Architects dated 28 February 2020.

Sheet Number	Drawing Title
DA.101	Cover Sheet
DA.102	Site Analysis Plan
DA.301	Basement Floor Plan
DA.302	Ground Floor Plan
DA.303	First Floor Plan
DA.304	Roof Plan
DA.401	South (Street) Elevation
DA.402	North Elevation
DA.403	East Elevation
DA.404	West Elevation
DA.501	Long Section
DA.502	Short Section
DA.901	Area Calculations
DA.902	Materials Board
DA.903	Site Waste & Recycling Mngmt & Exc Plan
DA.911	Shadow Diagrams - 9am June
DA.912	Shadow Diagrams - 12pm June
DA.913	Shadow Diagrams - 3pm June
DA.914	Shadow Diagrams - Elevational 42 Bower
DA.915	Shadow Diagrams - Elevational 46 Bower

The following reports are also submitted with this application

- Survey Plan prepared by Hill and Blume
- Stormwater Plan prepared by Partridge Hydraulic Services
- BASIX Certificate prepared by Aspect Z
- Terrestrial Biodiversity Report prepared by GIS Environmental Consultants
- Landscape Plan prepared by Dangar Barin Smith
- Geotechnical Report prepared by JK Geotechnics
- Statement of Heritage Significance prepared by Zoltan Kovacs Architect

It is proposed to demolish the existing structures and construct a new 2-storey dwelling with a swimming pool to the rear. Specifically, the dwelling is proposed as follows:

- **Basement**
 - Lounge room
 - Store room
 - Garden store room
 - Stairs leading to the upper level
 - Rainwater tank
 - Pool plant

- **Ground floor**

- Front yard
- Double garage
- Dwelling entry
- Study
- Powder room
- Dining room
- Open plan lounge area and kitchen
- Stairs leading to the upper and lower levels
- Rear north-facing deck accessed from the kitchen and lounge area
- In-ground swimming pool
- Rear landscaped yard

- **First floor**

- TV room
- Master bedroom with ensuite and 2 x walk-in-robos
- Bedroom 2 with ensuite
- Bedroom 3 with ensuite
- Rear north-facing balcony accessed from the master bedroom and Bedroom 2
- Laundry
- Internal west-facing courtyard
- Internal south-facing courtyard

- **External**

- Concrete off form
- Stone cladding
- White render external wall
- Windows Aluminium framed
- Vertical timber cladding

The proposal follows the same footprint as the design previously approved in DA 202/2016. The existing side setbacks are maintained, and the front and rear back setbacks are similar to that approved under DA 202/2016. The garage is proposed to be located in the same location as previously approved under DA 202/2016. The proposed garage will be built to the eastern side boundary.

The proposed maximum building height is the same as that previously approved under DA 202/2016. The previously approved design was 2-storeys at the street and 3-storeys at the rear. The subject proposal maintains a 2-storey street elevation and provides a 2-storey rear elevation with a basement level with an eastern side excavated passage-way. The proposed landscaping to the rear is terraced and follows the steep slope of the site.

The proposal induces removing an existing tree at the rear of the site and relocating it to a new location 1.5m to the north. Refer to the Landscape Plan prepared by Dangar Barin Smith submitted with this DA.

The existing sewer and stormwater pipes that are visible at the sandstone rock outcrop at the rear of the site will be relocated and core holes drilled through the rock. The stormwater pipes will be diverted to the eastern boundary and around to re-join the existing connection. The sewer pipes will be connected to the existing pipes and diverted if necessary. The diverted sewer and stormwater pipes will be trenched into the ground. The relocation of the sewer and stormwater pipes will be an improvement to the rock outcrop at the rear of the site. Refer to the Geotechnical Report prepared by JK Geotechnics and the Stormwater Plan prepared by Partridge Hydraulic Services for further information.

The Geotechnical Report states the following regard to the proposed relocation of the sewer and stormwater pipes:

“To relocate stormwater or sewer pipes, we recommend core holes are drilled through the rock. Provided the diameter is similar to the existing pipes, cored holes should not reduce the integrity of the overhang. Any additional localised excavation required in the rock to install the pipes should discrete, carried out using non-vibratory techniques such as hand held concrete saws/grinders, and subject to geotechnical engineers’ approval.”

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The following matters are to be considered in the assessment of this development application under Section 4.15 of the Environmental Planning & Assessment Act, 1979.

6. S.4.15(1)(a)(i) ENVIRONMENTAL PLANNING INSTRUMENTS

6.1 Objects of the Environmental Planning and Assessment Act

The relevant objects under Section 1.3 of the Environmental Planning and Assessment Act, 1979 are:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

It is proposed to demolish the existing structures and construct a new 2-storey dwelling with a swimming pool to the rear. The proposal complies with relevant objects above in the following manner:

- Contributes to the social welfare of particular members of the community by providing a more liveable dwelling environment.
- The building will have excellent ESD performance and is designed to comply with BASIX requirements, helping to facilitate ecologically sustainable development.
- The proposal is permissible and complies with the relevant objectives of the zone, thereby promoting the orderly and economic use and development of land.
- The proposal is of a high standard of design and amenity in relation to the existing built environment.
- The proposal promotes the proper construction and maintenance of building through compliance with the Building Code of Australia (BCA).

As such the proposal is consistent with the relevant objects of the Act.

6.2 Integrated Development

The proposal does not constitute Integrated Development.

6.3 Relevant State Instruments and Legislation

State Environmental Planning Policy- Building Sustainability Index: (BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") is applicable to this application.

A BASIX Certificate prepared by Aspect Z is included with this application. This demonstrates compliance with BASIX targets for Water, Energy and Thermal Comfort.

State Environmental Planning Policy No. 55 - Remediation of Land

This SEPP provides a state-wide practice for the remediation of contaminated land. Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has to be given as to whether the land is contaminated.

The site appears to have been in residential use since its original subdivision and there is no evidence of any potentially contaminating uses occurring. It can be concluded beyond reasonable doubt that there is no likelihood of contamination on

this site. No further consideration is therefore required under clause 7 (1) (b) and (c) of SEPP 55.

6.4 Manly Local Environmental Plan 2013

Aims of Plan

The aims of the plan are:

- (2) *The particular aims of this Plan are as follows:*
 - (a) *in relation to all land in Manly:*
 - (i) *to promote a high standard of urban design that responds to the existing or desired future character of areas, and*
 - (ii) *to foster economic, environmental and social welfare so that Manly continues to develop as an accessible, sustainable, prosperous, and safe place to live, work or visit, and*
 - (iii) *to ensure full and efficient use of existing social and physical infrastructure and the future provision of services and facilities to meet any increase in demand, and*
 - (iv) *to ensure all development appropriately responds to environmental constraints and does not adversely affect the character, amenity or heritage of Manly or its existing permanent residential population,*
 - (b) *in relation to residential development:*
 - (i) *to provide and maintain a diverse range of housing opportunities and choices that encourages affordable housing to cater for an ageing population, changing demographics and all socio-economic groups, and*
 - (ii) *to ensure high quality landscaped areas in the residential environment, and*
 - (iii) *to encourage higher density residential development to be located close to major transport nodes, services and employment opportunities, and*
 - (iv) *to maintain active retail, business and other non-residential uses at street level while allowing for shop top housing in centres and offices at upper floors in local centres,*
 - (d) *in relation to transport, infrastructure and amenities:*
 - (i) *to reduce private car dependency, increase the viability of various public transport modes, minimise conflict between pedestrians and vehicular movement systems and*

-
- encourage walking and cycling while concentrating intensive land uses and trip generating activities in locations most accessible to public transport and centres, and*
- (ii) to provide for a range of recreational and community service opportunities to meet the needs of residents and visitors to Manly and promote the efficient and equitable provisions of public services, infrastructure and amenities,*
- (f) in relation to the natural environment:*
- (i) to conserve and enhance terrestrial, aquatic and riparian habitats, biodiversity, wildlife habitat corridors, remnant indigenous vegetation, geodiversity and natural watercourses, and*
 - (ii) to promote energy conservation, water cycle management (incorporating water conservation, water reuse, catchment management, stormwater pollution control and flood risk management) and water sensitive urban design, and*
 - (iii) to protect, enhance and manage environmentally sensitive land with special aesthetic, ecological, scientific, cultural or conservation values for the benefit of present and future generations, and*
 - (iv) to protect existing landforms and natural drainage systems and minimise the risk to the community in areas subject to environmental hazards, particularly flooding, bush fires, acid sulfate soils, sea level rise, tsunami and landslip, and*
 - (v) to provide a framework that facilitates and encourages measures to assist the adaptation of the local environment to mitigate the impacts of climate change, and*
 - (vi) to give priority to retaining bushland for its own intrinsic value and as a recreational, educational and scientific resource,*
- (g) in relation to Manly's unique harbour, coastal lagoon and ocean beach setting:*
- (i) to preserve and enhance the amenity of public places and areas visible from navigable water around Manly, and*
 - (ii) to retain open space, make more foreshore land available for public access and protect, restore and enhance riparian land along watercourses and foreshore bushland.*

The proposal complies with the above objectives.

Aims and objectives of zone

The site is zoned E3 Environmental Management under the provisions of the Manly Local Environmental Plan (LEP) 2013.

The objectives of the E3 zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal is consistent with the objectives of the E3 zoning in the following manner:

- The proposal will retain the existing low-impact residential use of the site;
- The proposal will provide a built form which will ensure that the ecological and aesthetic value of the locality is maintained;
- The proposal is considered to be low impact in terms of ecological, scientific or aesthetic values.
- The proposal will not affect the natural scenic qualities of the foreshore and existing tree canopies;
- The proposal will not affect the landscape character of the locality; and
- The proposed development is considered suitable for the subject site having regard to existing vegetation, topography and surrounding land uses.

Statutory Compliance Table

Site Area (697m ²)	Proposed	Control	Complies
Height	8.72m	8.5m	Refer to Clause 4.6 Variation at Appendix 1
Floor Space Ratio	0.45:1 (314m ²)	0.45:1 (313m ²)	Yes

Clause 4.3 – Height of buildings

The objectives of Clause 4.3 Height of buildings are:

- (1) *The objectives of this clause are as follows—*
- (a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
 - (b) *to control the bulk and scale of buildings,*
 - (c) *to minimise disruption to the following—*
 - (i) *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) *views between public spaces (including the harbour and foreshores),*
 - (d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
 - (e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Clause 4.3 of the LEP prescribes a maximum height of 8.5m for a building on the subject site. The proposed development will have a maximum height of 8.72 metres.

It is noted that the proposal does not comply with the building height development standard. The building height non-compliance is comprehensively justified in the accompanying Clause 4.6 variation (refer to **Appendix 1**).

In brief, the variation is supported on the following basis:

- Compliance with the development standard is unreasonable and unnecessary as the variation to the building height control is only in relation to part of the proposed new dwelling, i.e. the rear part of the dwelling. The remainder of the dwelling complies with the building height control. Refer to the extract of the Section Plan below.
- The height non-compliance is primarily due to the topography of the site, which slopes significantly from south to north, with a fall of approximately 25m from the front boundary (south) to the rear boundary (north).
- The proposed height is consistent with the previously approved height non-compliance of 8.72 metres.
- The proposed building height and bulk is of an appropriate form and scale. Through various design solutions and considerations, the proposed height and scale of the development will be compatible with the surrounding dwellings (refer to the photos in Section 3 of this SEE) and the desired future character of the area in terms of building height and roof form.
- The proposed new dwelling incorporates articulated facades to avoid a bulky appearance and to create proportions consistent within the streetscape.
- Rooftop planters have been provided to soften the bulk of the built form.
- The rear alignment of the proposed new dwelling is setback further than the adjoining dwellings.
- The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling and a similar bulk as the previously approved dwelling when viewed from the properties on the opposite side of Bower Street, thereby increasing the potential for more views towards the water and coastline of Manly (refer to the extract of the front and rear elevation plans below).
- The proposal will not result in a loss of solar access to the north-facing windows or private open space areas of the adjoining properties, thereby complying with the DCP objectives for overshadowing.
- Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

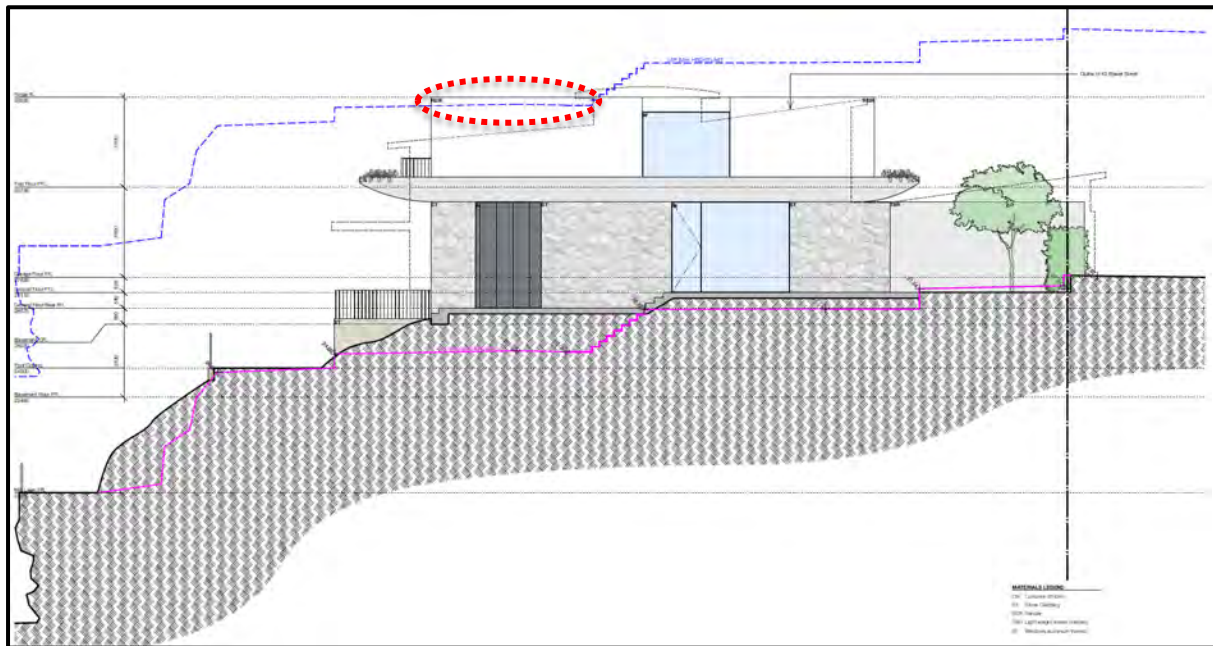


Figure 13: Extract of the section plan. The red dashed line demonstrates that the variation to the building height control is only in relation to part of the proposed new dwelling, i.e. the rear part of the dwelling. The remainder of the dwelling complies with the building height control.

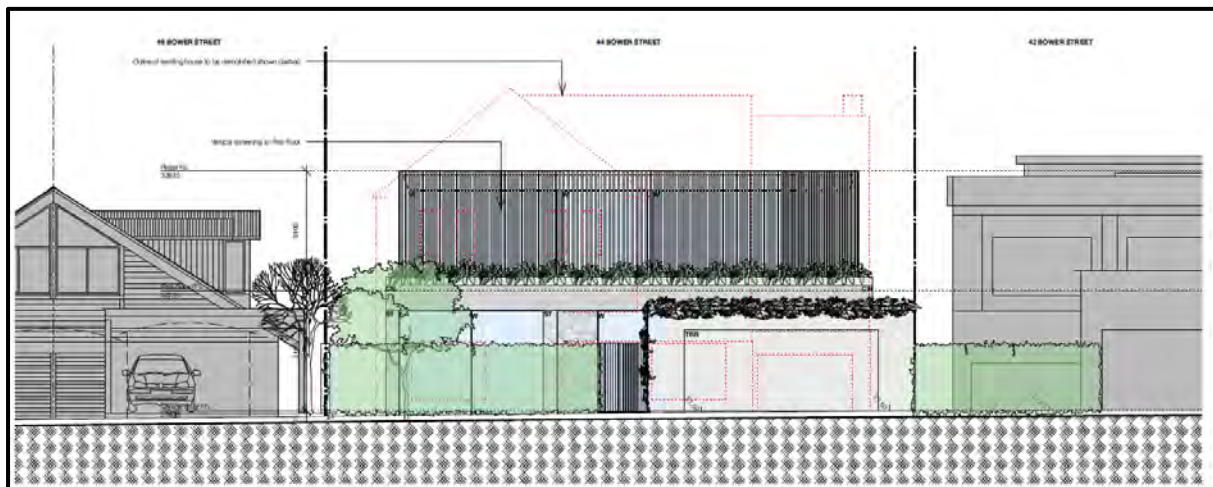


Figure 14: Extract of the front elevation plan. The red dashed line indicates the bulk of the existing dwelling. The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling.

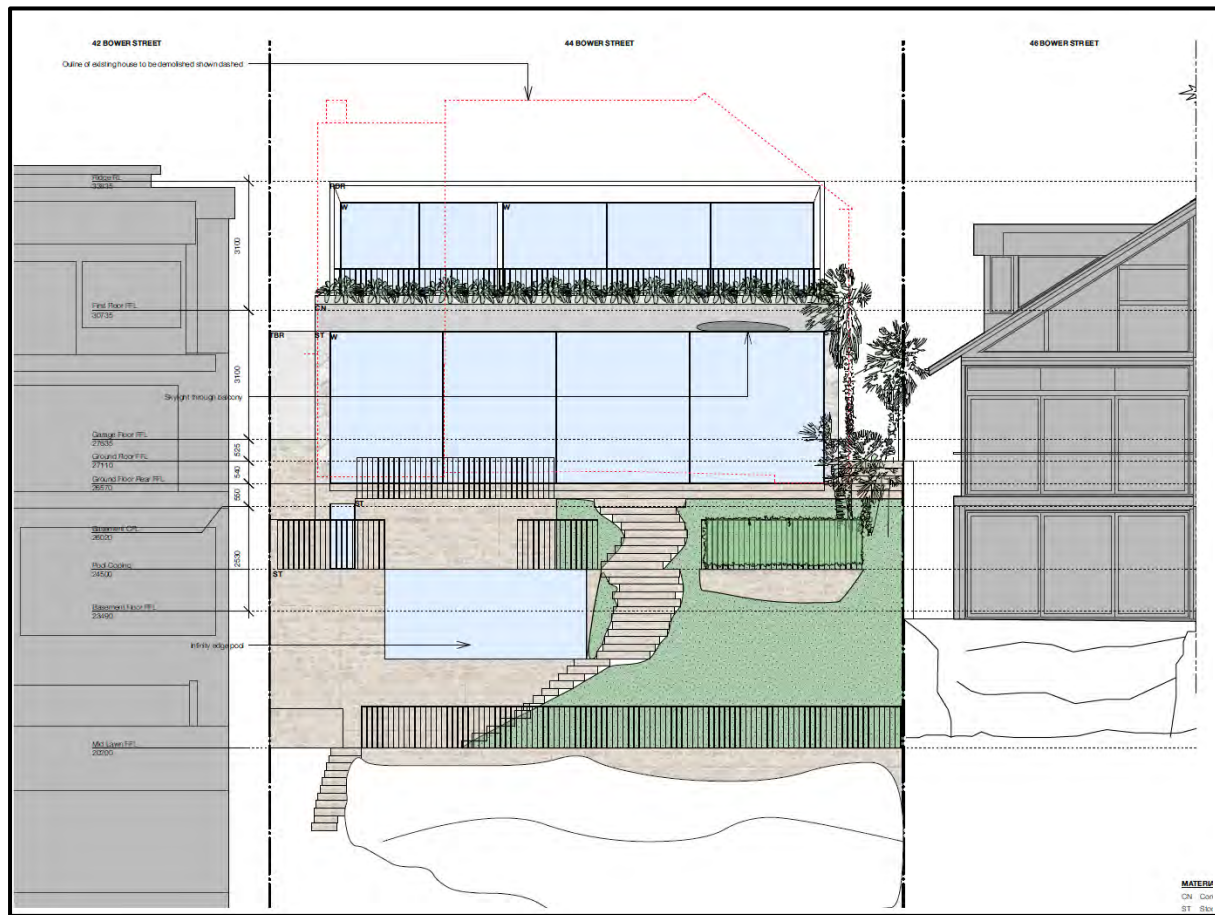


Figure 15: Extract of the rear elevation plan. The red dashed line indicates the bulk of the existing dwelling. The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling.

Clause 4.2 – Floor space ratio

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
 - (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
 - (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
 - (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
 - (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Clause 4.4 of the LEP prescribes a maximum FSR of 0.45:1 (314m²) for development on the subject site. The proposed development will have a FSR of 0.45:1 (313m²), thereby complying with this control.

Clause 4.6 – Exceptions to development standards

The proposal does not comply with the building height development standard. The building height non-compliance is comprehensively justified in the accompanying Clause 4.6 variation (refer to **Appendix 1**).

Clause 5.10 – Heritage conservation

The subject dwelling is not identified as a Heritage Item and is not within a Heritage Conservation Area. Nearby heritage items include the following:

- I86 at 50 Bower Street – House
- I87 at 101 Bower Street - House, “Bower Hall”
- I88 at 105 Bower Street - House
- I89 at 129 Bower Street - Residential flat building, “Borambil”

A Heritage Report prepared by Zoltan Kovacs Architect is submitted with this DA. The heritage advice states the following:

Statement of Significance

The statement of significance for 44 Bower Street, Manly is as follows:

“The land was originally part of lands granted to the Roman Catholic Church in 1879 and to Cardinal Moran in 1899 respectively. The allotment forms part of a gradual release dating from 1921. The two storey brick and tile Inter-war English Vernacular residence was designed by an unknown architect and built between 1937 and 1943. It is representative, but not an outstanding example of residential development of Manly in the Inter-war period. It features tiled steeply-pitched gable roofs and diamond patterned windows. Its dark red face brickwork is covered with creepers. Its rear, ocean facing elevation supports a two storey intrusive steel framed veranda. While externally the fabric of the building exhibits a reasonably high level of integrity, the interior has been degraded as a result of a series past intrusions.”

Heritage Impact Assessment

Will demolition of the building generate an adverse conservation impact?

The foregoing assessment has established that the existing house on the subject site does not exhibit any heritage significance in the context of the local area and its retention is not warranted on conservation grounds. The assessment of the previous development for the site (D/202/2016), which was undertaken under the current planning instruments, confirmed this fact and consent was issued for demolition of the house. Consequently the demolition proposed by Madeleine Blanchfield Architects will not generate an adverse impact for the cultural heritage of the Manly area.

The proposed demolition does not affect the cultural heritage of the municipality of Manly.

Conclusion

Having examined the heritage impact of the development on the cultural heritage of the local area the following can be concluded:

The demolition of 44 Bower Street, Manly will not generate any adverse heritage conservation impacts.

Clause 6.1 – Acid sulfate soils

The site is located in a Class 5 area as set out in the LEP Acid Sulphate Soil Map. In this regard, further assessment would be required in the following circumstances:

- works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

The proposed are not located within 500m of an adjacent Class 1, 2, 3 or 4 land parcels and not below 5 metres Australian Height Datum. Therefore, no further assessment is required.

Clause 6.2 – Earthworks

Excavation up to a depth of approximately 2.4m is proposed in association with the basement level and the eastern side passage-way. Excavation will occur at the eastern boundary to allow for the side passage-way. Excavation at the western boundary is approximately 1.6m. There is also excavation to the terraced yard areas to accommodate the proposed pool and levels as required.

A Geotechnical Report prepared by JK Geotechnics was submitted for DA 222/2015, which proposed a greater depth of excavation (approximately 3m). This

Geotechnical Report a number of recommendations that will be followed to ensure no adverse impacts are associated with excavation processes.

Clause 6.2 of MLEP 2013 requires Council to have regard to the following:

- (a) *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) *the effect of the development on the likely future use or redevelopment of the land,*
- (c) *the quality of the fill or the soil to be excavated, or both,*
- (d) *the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) *the source of any fill material and the destination of any excavated material,*
- (f) *the likelihood of disturbing relics,*
- (g) *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The provisions of this clause are addressed as follows:

- The excavation proposed is unlikely to encounter ground water and will not disrupt or detrimentally affect drainage patterns or soil stability in the locality.
- The excavation will not affect any significant landform or vegetation.
- The proposed excavation will not affect the future use or future development of the site.
- The soil to be excavated will comprise sandy topsoil and sandstone bedrock.
- The excavation as proposed will not affect the amenity of adjoining properties as it allows for parking below ground whilst providing appropriate open space above ground.
- The excavation proposed will not result in the disturbance of relics.
- The proposed excavation will not effect any waterway, drinking water catchment or environmentally sensitive area.
- Standard conditions of consent will limit the impact of noise on adjoining properties by limiting hours of excavation and the duration of the excavation.
- All recommendations of the submitted geotechnical report will be complied with during excavation. In addition, any further conditions deemed necessary by Council will be complied with.
- Standard conditions of consent will implement appropriate measures to control dust.
- Best practice techniques to control erosion from the site will be implemented.
- Standard conditions require that the applicant may not do anything on or in relation to the site that removes the support provided by the supporting land to any other land.

Clause 6.4 – Stormwater management

Stormwater Plans prepared by Partridge Hydraulic Services are submitted with the development application.

Clause 6.5 – Terrestrial biodiversity

The LEP 'Terrestrial Biodiversity Map' identifies the subject site as having high terrestrial biodiversity values.

- (1) *The objective of this clause is to maintain terrestrial biodiversity by—*
- (a) protecting native fauna and flora, and*
 - (b) protecting the ecological processes necessary for their continued existence, and*
 - (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

A Terrestrial Biodiversity Report prepared by GIS Environmental Consultants is submitted with this DA. The Terrestrial Biodiversity Report assesses the likely impact of a proposed development on the terrestrial flora, fauna and ecological communities, in particular the endangered Long-nosed Bandicoot population on North Head. The report also makes recommendations on ways to avoid or reduce impacts caused by the development.

The report concludes the following:

“The study site currently provides 245m² (or 35% of the site) of good quality bandicoot foraging habitat in the front and rear yards and along the cliff in the northern part of the property. The proposal will result in a permanent loss of 25m² of foraging habitat from within the property. Part of the landscaping in the northern part of the property and the cliff habitat is proposed to be retained. The proposal will provide 220m² (31.6% of the site) of potential bandicoot foraging habitat in the form of landscaping at the front, rear and side of the property and the retained cliff habitat. (See before and after Green areas on Map 1). (See before and after Green areas on Map 1).

Access to this habitat (See Dark Blue arrows on Map 1) will be changed by the proposal. Recommendations have been made to maintain or provide access (see Magenta arrows on Map 1).

The site also provides suitable habitat for Threatened microbats and the Grey-headed Flyingfox and the native Water Dragon, Diamond Python, Brush-tailed and Ring-tailed possums and native birds.

The development is unlikely to have a significant impact on the conservation of any Endangered Population, Threatened Species or Endangered Ecological Community. The proposal does not meet the BC Act Threshold Test. Further assessment of the impact of this proposal in the form of a Biodiversity Development Assessment Report (BDAR) not recommended in relation to this development application at this site.

The ecological impact is not considered an unacceptable impact under section 4.15 (79C(b)) of the Environmental Planning and Assessment Act 1979 or a significant impact under Section 7.3 of the Biodiversity Conservation Act 2016.

The proposal will not have a significant impact to terrestrial biodiversity and meets the requirement of clause 6.5 of the MLEP.”

Clause 6.9 – Foreshore scenic protection area

The subject site is located in the foreshore scenic protection area.

The dwelling as proposed will not impact on public access to the foreshore currently available to the rear of the site. The location, bulk and scale and of the dwelling is in keeping with its existing context and will not result in any visual amenity impacts on the scenic quality of the foreshore.

It is also noted that the existing significant trees to the north of the site will be retained and will provide screening of the dwelling as viewed from the foreshore.

The proposed development does not result in significant overshadowing of the coastal foreshore and will not affect views from a public space to the coastal foreshore.

The proposed development includes a stormwater management plan that includes management of stormwater from the site. The site is not known to be subject to coastal hazards and the development includes a geotechnical report.

The application has been assessed having regard to the relevant provisions of the LEP and is acceptable for the reasons discussed above.

7. S.4.15(1)(a)(ii)

DRAFT AMENDMENTS TO STATUTORY CONTROLS

Not applicable to this assessment.

8. S.4.15(1)(a)(iii) DEVELOPMENT CONTROL PLANS

8.1 Manly DCP 2013

Compliance Table

Site Area (697m ²)	Permitted/ Required	Existing	Approved	Proposed	Complies
Floor Space Ratio	0.45:1 (314m ²)	0.277:1 (193.65m ²)	0.45:1 (313.5m ²)	0.45:1 (313m ²)	Yes
Height of Building	8.5m	9.36 – 9.66m	8.72m	8.72m	As Approved
Wall Height	West 7.35m	West 6.5-7.86m	West 7.07-8.42m	West: 4.05m – 4.59m	Yes
	East 8m	East 3.4-9.6m	East 2.73-8.44m	East: 4.05m – 7.67m	Yes
Setback Front	6m	8.3 – 10.2m	7.28m dwelling Nil Garage	7m dwelling Nil garage	Yes
Setback Rear	8m	23.28m	19.40m	19.63m	Yes
Setback Side (west)					
Lower ground	0.9m	n/a	1.6m	1.55m	Yes Existing Merit
Ground	1.6 – 2.7m	1.6m	1.25-1.6m	1.55m	
First	2.7 – 2.8m	1.6m	1.25-1.6m	1.9m	
Setback Side (east)					
Lower ground	0.9m	n/a	1.1m	1.1m	As Approved Merit Merit
Ground	1.5m	1.12m	1.1m	0m - 1.1m	
First	2.5m	1.12m	1.1m	1.45m	
Open Space – Total	55% (383m ²)	504.13m ²	454.88m ²	449m ² (64%)	Yes
Open Space – Landscaped Area	35% open space (244m ²)	313.39m ²	261.47m ²	310m ² (44%)	Yes
Private Open Space (minimum)	18m ²	344m ²	126.32m ²	234m ²	Yes

Site Area (697m ²)	Permitted/ Required	Existing	Approved	Proposed	Complies
				(192m ² ground floor + 42m ² first floor)	
Car Parking	2	2	2	2	Yes

* Calculations prepared by Madeleine Blanchfield Architects

Design Considerations

The proposed dwelling responds to the slope of the site and will open up views from surrounding properties through the change in roof form from that existing.

The design of the dwelling is sympathetic to the site's foreshore context and the siting of the dwelling will allow for the landscape character of the site to be enhanced.

Excavation and Earthworks

Excavation up to a depth of approximately 2.4m is proposed in association with the basement level and the eastern side passage-way. Excavation will occur at the eastern boundary to allow for the side passage-way. Excavation at the western boundary is approximately 1.6m. There is also excavation to the terraced yard areas to accommodate the proposed pool and levels as required.

Stormwater Management

Details have been provided in the Stormwater Plans prepared by Partridge Hydraulic Services submitted with this DA.

Floor Space Ratio

Clause 4.4 of the LEP prescribes a maximum FSR of 0.45:1 (314sqm) for development on the subject site. The proposed development will have a FSR of 45:1 (313sqm), thereby complying with this control /Clause 4.6.

Wall Height

On sloping sites, the maximum wall height shall be interpolated from the graphs in Figures 4 and 5 of the DCP. For the subject site, this equates to 8m for the eastern elevation and 7.35m for the western elevation.

The proposal will provide a maximum wall height of 7.67m along the eastern elevation and 4.59m along the western elevation, thereby complying with the wall height control for this site.

The height as proposed is considered to be consistent with the objectives of the wall height control in the following manner:

- The proposal will provide a building bulk which is compatible with surrounding development in terms of bulk and scale;
- The proposed building height is consistent with other building heights in the locality;
- The proposed dwelling will not affect views from adjoining development and will improve views from adjacent development on the opposite of Bower Street through the reduction in maximum building height; and
- The proposal will not affect sunlight penetration to private open spaces within the development site and to private open spaces and windows to the living spaces of adjacent residential development.

The proposal is therefore considered to be satisfactory in terms of the proposed wall height.

Setbacks

The proposal provides a dwelling complying with the front setback of 7m which is consistent with varying front building line of between 7.2m and 14.8m from the front boundary.

The proposed rear setback of 19.63m, complies with the minimum required rear setback of 8m and is in keeping with the predominant setback within the locality.

The DCP requires the side setback between any part of a building and the side boundary must not be less than 1/3 of the height of the adjacent external wall of the proposed building. The proposal does not fully comply with the setback controls, however, the proposal seeks to provide a dwelling, which is consistent with the existing and approved side boundary setbacks and therefore will not result in any further loss of amenity for adjoining properties. In addition, the setbacks are consistent with those previously approved.

The side setbacks are consistent with setbacks within the streetscape and will not result in a loss of amenity for the adjoining property to the east and west in terms of solar access, privacy or sense of enclosure.

The setbacks as proposed are considered to be consistent with the objectives of the setback control in the following manner:

- The proposal will provide a dwelling, which follows the predominant form of side boundary setbacks within the streetscape;
- The proposed dwelling will protect the privacy of adjoining properties with the primary outlook from the dwelling being to the front and rear and the larger ground floor side windows (to the kitchen, dining and study) being treated with vertical batten screens (round dowels);
- The proposal will allow for equitable access to light and sunshine, facilitated by the orientation of these sites;
- The proposed setbacks will not result in a loss of views from adjoining properties or from the public domain and will create additional views from adjacent properties through the reduction in height of the dwelling; and
- Adequate and appropriate planting can be accommodated within the site and it is noted that some planting has been included within the side setbacks.

Open Space and Landscaping

The proposal will maintain the open space character of the site, and this will continue to dominate the site. In this regard, the proposal will provide a compliant open space area for the site and a compliant landscaped area.

The Landscape Plan prepared by Dangar Barin Smith submitted with this DA demonstrates how the proposal will retain and enhance the landscape character. The significant trees in the northern part of the site will be retained providing screening of the site from the foreshore.

The proposal induces removing an existing tree at the rear of the site and relocating it to a new location 1.5m to the north. Refer to the Landscape Plan prepared by Dangar Barin Smith submitted with this DA.

The proposed swimming pool will not occupy more than 30% of the total landscaped area.

Swimming Pools

The proposal includes a swimming pool to the rear of the site. The controls require that swimming pools shall be built on or in the ground and not elevated above more than 1m above natural ground level.

The proposed swimming pool is located below existing ground level for that section of the site. In addition, it will be set back from the side boundaries of the site and integrated within the landscaping of the rear setback.

The proposed swimming pool is considered to be consistent with the objectives relating to this section of the DCP in that the visual and acoustic privacy of neighbouring properties will not be affected and the pool will not affect the visual amenity of the site as viewed from the rear and from the water.

Car Parking and Access

The proposal includes a double garage at the front of the site, which is consistent with the dwelling approved under DA 202/2016.

The existing streetscape is characterised by garages within the front setbacks of adjacent and adjoining development and the provision of such a structure was previously supported by Council on the basis that it would not impact on the visual amenity of Bower Street.

The proposed garage at width of 6m complies with the maximum width for car parking structures at street frontage and its location will still allow for the main frontage of the dwelling to be visible from Bower Street with its adjoining front garden.

Sunlight Access and Overshadowing

As shown on the shadow diagrams and shadow elevations, the proposed development will result in less overshadowing to 42 Bower Street, which adjoins the subject site to the east, compared the recently approved development. Refer to the extract of the shadow elevation plan below.

The proposed development will result in a slight increase of overshadowing to 46 Bower Street, which adjoins the subject site to the west, compared the recently approved development. This slight increase in overshadowing will only occur in the morning. Refer to the extract of the shadow elevation plan below.

The proposal will however not result in a loss of solar access to the north-facing windows or private open space areas of the adjoining properties, thereby complying with the DCP objectives for overshadowing.

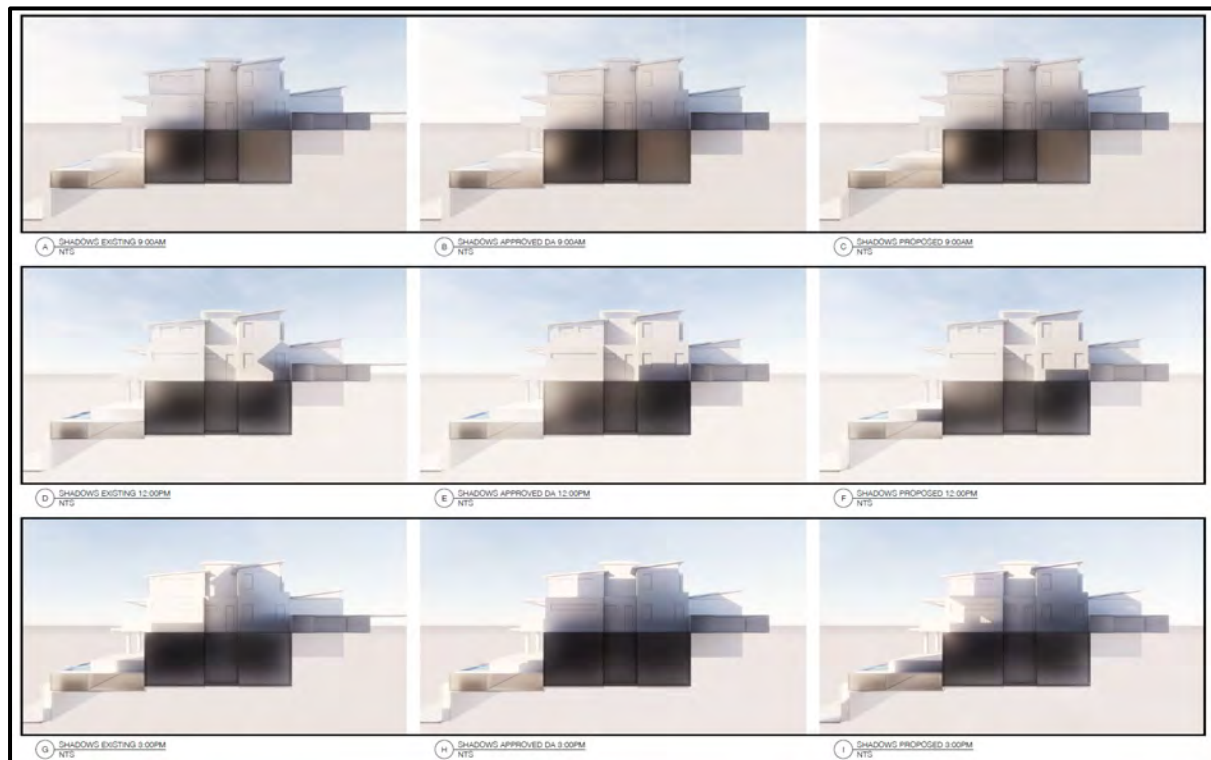


Figure 16: Extract of the elevation shadow plan demonstrating that the proposed development will result in less overshadowing to 42 Bower Street, which adjoins the subject site to the east, compared to the recently approved development

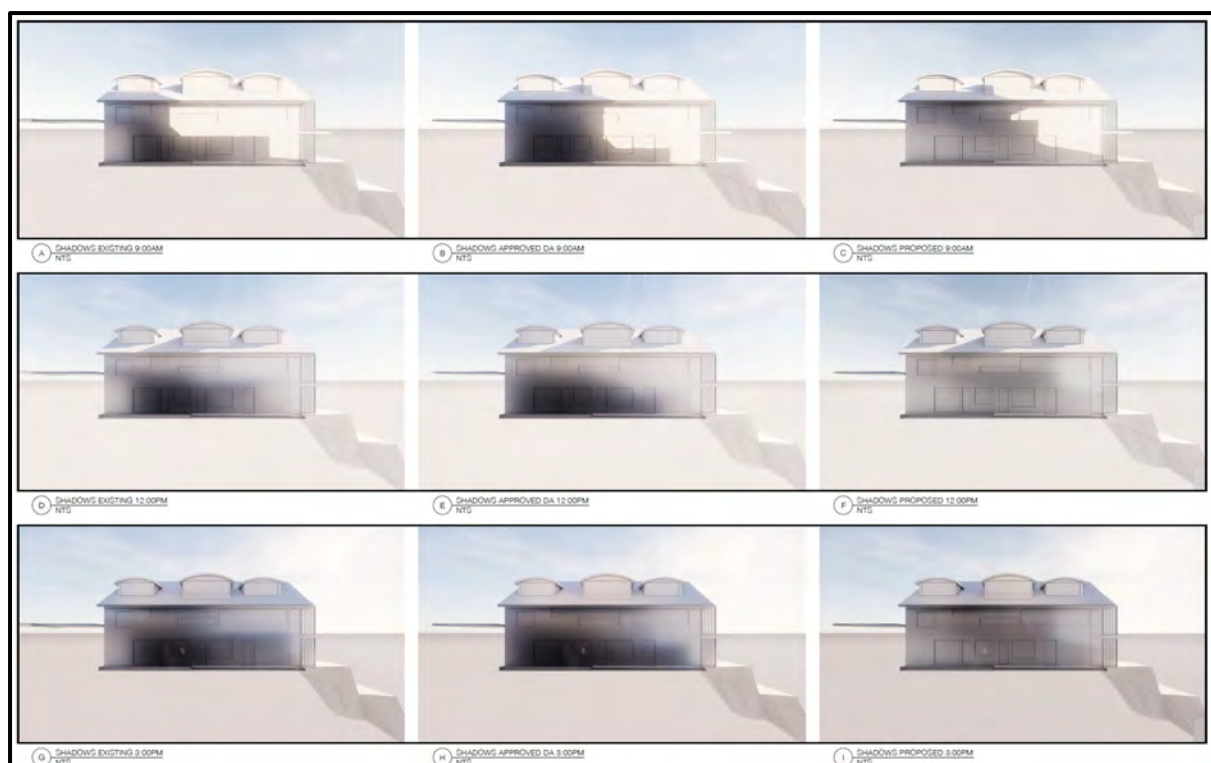


Figure 17: Extract of the elevation shadow plan demonstrating that the proposed development will result in a slight increase of overshadowing in the morning to 46 Bower Street, which adjoins the subject site to the west, compared to the recently approved development

Privacy and Security

The proposed dwelling has been designed and sited to ensure adequate visual and acoustic privacy between the dwelling and adjoining dwellings. The proposal has considered the location of the development on the site, the internal layout and the building materials used.

The proposed works will have appropriate setbacks thereby providing adequate separation from the adjoining properties.

Windows have been appropriately sited and designed to minimise any potential overlooking.

At the ground level, the rear deck will be set back from the boundaries of the site and to ensure visual privacy.

The rear private open space area will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.

The orientation of the ground floor living area to the rear of the site ensures that there are no adverse or unreasonable visual or acoustic privacy impacts to neighbouring properties.

The proposed rear balcony, south-facing courtyard and west-facing courtyard at the first floor level are set within the external walls of the dwelling. The first floor rear balcony will not to be used for entertaining purposes and will be used on a passive basis due to its location off the master bedroom and Bedroom 2. The first floor south-facing and west-facing courtyards will be accessible for maintenance purposes only.

Maintenance of Views

The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling and a similar bulk as the previously approved dwelling when viewed from the properties on the opposite side of Bower Street, thereby increasing the potential for more views towards the water and coastline of Manly (refer to the extract of the front and rear elevation plans below).

The proposal provides appropriate view corridors as well building articulation to ensure that highly valued views are retained and that the impact on properties in terms of view loss is negligible.

The proposal therefore goes beyond the objectives of the DCP in terms of minimising view loss by maximising the view of the water and land/water interface over the roof of the building, where such a view is currently limited.

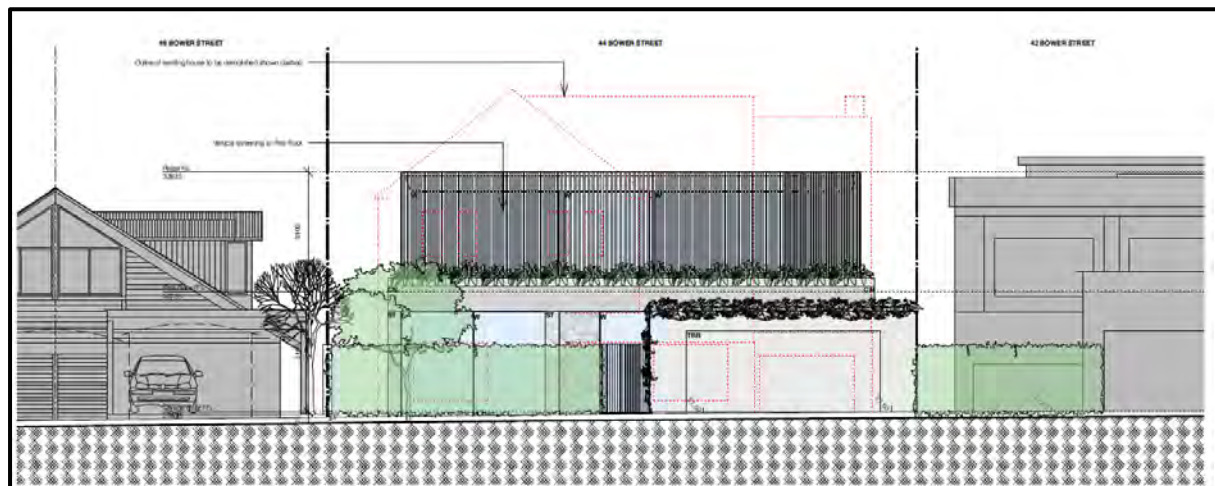


Figure 18: Extract of the front elevation plan. The red dashed line indicates the bulk of the existing dwelling. The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling.

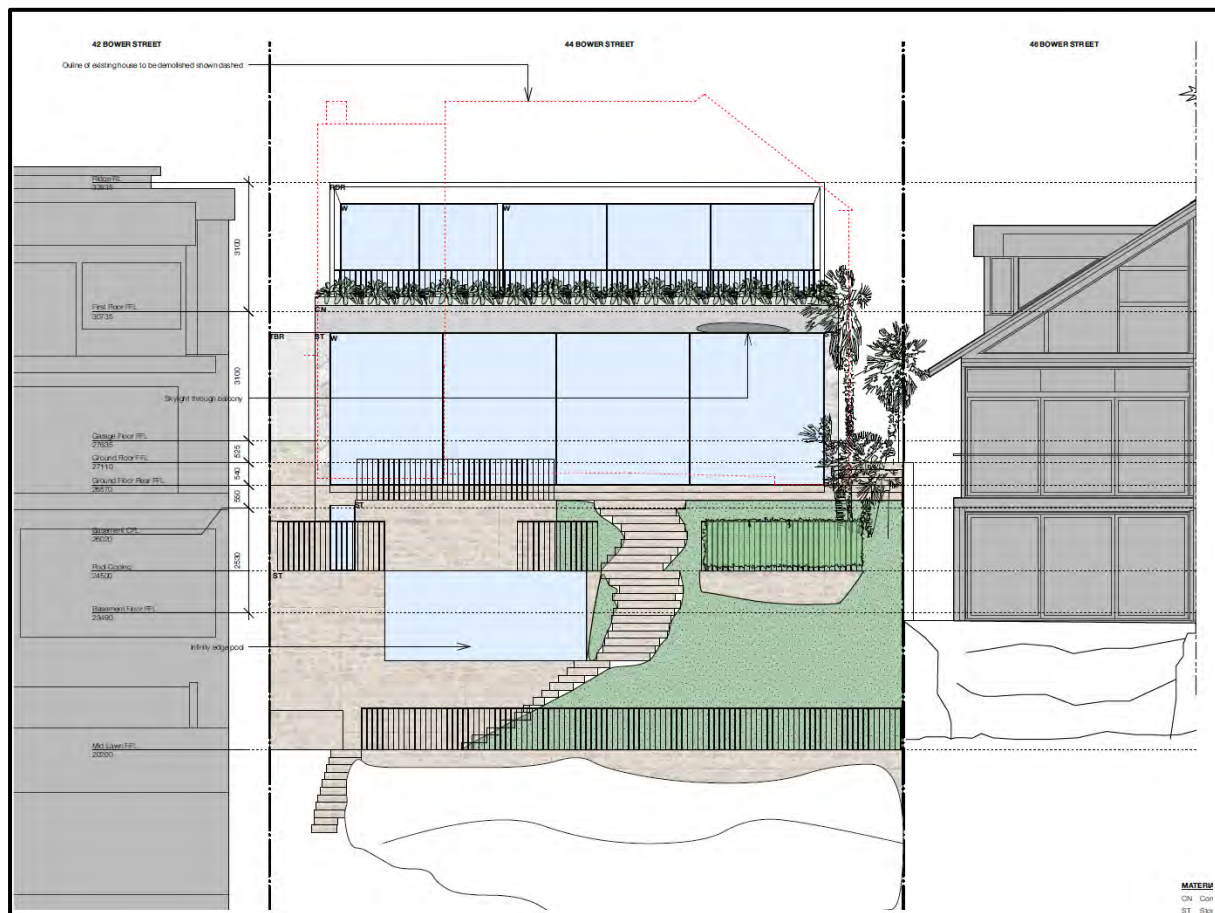


Figure 19: Extract of the rear elevation plan. The red dashed line indicates the bulk of the existing dwelling. The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling.

Fencing

The proposal includes 1.8m high timber side boundary fencing. No front fencing is proposed. A landscaped hedge will be provided along the front boundary of the site and a front gate 1.8m in height will be provided. The height of the front hedging and gate will be consistent with the height of the front hedging and gate of the adjoining property to the east at 42 Bower Street. The height of the front hedging and gate will provide the occupants with privacy and will not detract from the streetscape.

9. S.4.15(1)(a)(iv)

APPLICABLE REGULATIONS

Clause 92 of the EPA Regulation 2000 requires consideration of Australian Standard AS 2601-1991: The demolition of structures. It also requires compliance with this, by standard by condition of consent.

Demolition will be undertaken in strict accordance with AS 2601-1991.

Demolition works will be undertaken in accordance with prescribed times. It is intended that any noise generated from the site will comply with the relevant provisions of *the Protection of Environment Operations Act* and the *NSW EPA Environmental Noise Manual* for the control of construction noise. Approved silencing devices will be provided and maintained on all power operated machinery, where required.

10. S.4.15(1)(b)

THE LIKELY IMPACTS OF THE PROPOSAL

Construction works will be undertaken in accordance with prescribed times. It is intended that any noise generated from the site will comply with the relevant provisions of *the Protection of Environment Operations Act* and the *NSW EPA Environmental Noise Manual* for the control of construction noise. Approved silencing devices will be provided and maintained on all power operated machinery, where required.

Construction works will be carried out in accordance with the Building Code of Australia.

Excavation will be undertaken in accordance with standard Council conditions of consent and within nominated working hours. Construction noise associated with the excavation is intended to comply with the *Protection of Environment Operations Act 1997* and the *NSW EPA Environmental Noise Manual* for the control of construction noise. Precautions will be taken during site works to minimise vibration including the avoidance of sudden stop - start movements.

The site will be secured by a standard *Class A hoarding*, as required and appropriate signage will be erected. Sprays will be used during excavation; the public footpath, nature strip and road way will be kept clear and maintained in a safe condition.

The proposed excavation will not result in any pollution or siltation of any waterway or pose a threat to ecological communities or their habitats. Appropriate sediment

and erosion control measures will be adopted during site works and the existing Stormwater system will be protected during works

The above analysis demonstrates that the proposals will have no adverse Environmental Impact and therefore satisfies this section of the Act.

11. S.4.15(1)(c)

THE SUITABILITY OF THE SITE

The subject site is suitable for the proposal as:

1. The site is zoned E4 and it is proposed to construct a new dwelling that is permissible in the zone.
2. Adequate water, stormwater drainage and sewage facilities are available on the site for the proposed development.
3. Soil characteristics are appropriate.
4. The site is not subject to natural hazards such as bushfire tidal inundation and mass movement.
5. There are no precipitate constraints posed by adjacent land uses.
6. Appropriate erosion and sediment control measures will be employed during works.
7. The development will not result in environmental degradation of the coastal foreshore.
8. The site is well located in relation to recreation, public transport, shops and services, all available in the immediate locality.

The application therefore satisfies this section of the Act.

12. S.4.15(1)(d)

SUBMISSIONS MADE IN ACCORDANCE WITH THE ACT OR THE REGULATIONS

Not applicable to local development.

13. S.4.15(1)(e)**THE PUBLIC INTEREST – CONCLUSION**

It is proposed to demolish the existing structures and construct a new 2-storey dwelling with a swimming pool to the rear.

The proposed development is of a high-quality architectural design and has been designed to relate well to its site, adjoining sites and to the streetscape in terms of appearance, envelope, setbacks, bulk and scale.

The proposed development will be in the public interest, as it will provide an appropriate building form and will protect the residential amenity of adjoining properties.

The proposal complies with all relevant SEPP, LEP and DCP objectives and would have no adverse impact.

The application therefore satisfies this section of the Act.

APPENDIX 1

CLAUSE 4.6 VARIATION – BUILDING HEIGHT

44 Bower Street, Manly

REQUEST FOR VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP 2013

Clause 4.3 – Building Height

Clause 4.3 of the Manly LEP 2013 and the associated map prescribe a maximum building height of 8.5 metres for this site. The proposal seeks to demolish the existing structures and construct a new 2-storey dwelling with a swimming pool to the rear. The proposed development will have a maximum height of 8.72 metres, providing a non-compliance with this control. The percentage variation is 2.6%.

The proposal therefore seeks to vary the building height development standard.

The objectives of Clause 4.3 are as follows:

- (a) *to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*
- (b) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (c) *to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
- (d) *to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*
- (e) *to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*
- (f) *to use maximum height limits to assist in responding to the current and desired future character of the locality,*
- (g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- (h) *to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

The objectives of the E3 Environmental Management zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the Willoughby Local Environmental Plan 2012 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*

- (4) *Consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with¹. This objection relies on this method. Compliance with the objectives of the height standard is addressed under **Point 4 below**.

In addition, the following points are raised:

- Compliance with the development standard is unreasonable and unnecessary as the variation to the building height control is only in relation to part of the proposed new dwelling, i.e. the rear part of the

¹ *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245

dwelling. The remainder of the dwelling complies with the building height control. Refer to the extract of the Section Plan below.

- The height non-compliance is primarily due to the topography of the site, which slopes significantly from south to north, with a fall of approximately 25m from the front boundary (south) to the rear boundary (north).
- The proposed height is consistent with the previously approved height non-compliance of 8.72 metres.
- The proposed building height and bulk is of an appropriate form and scale. Through various design solutions and considerations, the proposed height and scale of the development will be compatible with the surrounding dwellings (refer to the photos in Section 3 of this SEE) and the desired future character of the area in terms of building height and roof form.
- The proposed new dwelling incorporates articulated facades to avoid a bulky appearance and to create proportions consistent within the streetscape.
- Rooftop planters have been provided to soften the bulk of the built form.
- The rear alignment of the proposed new dwelling is setback further than the adjoining dwellings.
- The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling and a similar bulk as the previously approved dwelling when viewed from the properties on the opposite side of Bower Street, thereby increasing the potential for more views towards the water and coastline of Manly (refer to the extract of the front and rear elevation plans below).
- The proposal will not result in a loss of solar access to the north-facing windows or private open space areas of the adjoining properties, thereby complying with the DCP objectives for overshadowing.
- Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.



Figure 22: Extract of the rear elevation plan. The red dashed line indicates the bulk of the existing dwelling. The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling.

2. There are sufficient environmental planning grounds to justify contravening the development standard:

The components proposed above the height control are:

- The rear part of the dwelling

The above component that does not comply with the height controls are shown in the extract of the section plan in **Figure 15** above. The remainder of the dwelling complies with the building height control.

Given the consistency of the proposal against the zone objectives and height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development will maintain the scale, character and streetscape of the area and retain residential amenity in terms of views, solar access, aural and visual privacy, foreshore setting and landscape quality.

The proposed height can be achieved without adverse impacts for the following reasons:

- The proposal will not result in the loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
- The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the height control can be justified as the proposal provides a consistent scale with neighbouring development. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome².

Reduction in the height will not result in improved amenity for adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds³.

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:

² *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]

³ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]

The proposal will be in the public interest as it meets the objectives of the height development standard as follows:

Objective (a) seeks to *provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment: The proposed building height and bulk is of an appropriate form and scale. Through various design solutions and considerations, the proposed height and scale of the development will be compatible with the surrounding dwellings (refer to the photos in Section 3 of this SEE) and the desired future character of the area in terms of building height and roof form. The proposed height is consistent with the previously approved height non-compliance of 8.72 metres.

Objective (b) seeks to *control the bulk and scale of buildings,*

Comment: The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling and a similar bulk as the previously approved dwelling when viewed from the properties on the opposite side of Bower Street (refer to the extract of the front and rear elevation plans above).

The proposed new dwelling incorporates articulated facades to avoid a bulky appearance and to create proportions consistent within the streetscape. Rooftop planters have been provided to soften the bulk of the built form.

Objective (c) seeks to *minimise disruption to the following—*

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
- (iii) views between public spaces (including the harbour and foreshores),*

Comment: The proposed dwelling will have a significantly reduced bulk compared to the existing dwelling and a similar bulk as the previously approved dwelling when viewed from the properties on the opposite side of Bower Street, thereby increasing the potential for more views towards the water and coastline of Manly (refer to the extract of the front and rear elevation plans below).

The proposal provides appropriate view corridors as well building articulation to ensure that highly valued views are retained and that the impact on properties in terms of view loss is negligible.

The proposal therefore goes beyond the objectives of the DCP in terms of minimising view loss by maximising the view of the water and land/water interface over the roof of the building, where such a view is currently limited.

Objective (d) seeks to *provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment: As shown on the shadow diagrams and shadow elevations, the proposed development will result in less overshadowing to 42 Bower Street, which adjoins the subject site to the east, compared the recently approved development.

The proposed development will result in a slight increase of overshadowing to 46 Bower Street, which adjoins the subject site to the west, compared the recently approved development. This slight increase in overshadowing will only occur in the morning.

The proposal will however not result in a loss of solar access to the north-facing windows or private open space areas of the adjoining properties, thereby complying with the DCP objectives for overshadowing.

Objective (e) seeks to *ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment: The proposal will retain and enhance the landscape character of the site. The significant trees in the northern part of the site will be retained providing screening of the site from the foreshore. The height and bulk of the proposed building has regard to existing vegetation on the site and the topography of the site.

The zoning of the property is E3 Environmental Management and the objectives of the zone are as follows:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or*

structures have regard to existing vegetation, topography and surrounding land uses.

The proposal is consistent with the objectives of the E3 zoning in the following manner:

- The proposal will retain the existing low-impact residential use of the site;
- The proposal will provide a built form which will ensure that the ecological and aesthetic value of the locality is maintained;
- The proposal is considered to be low impact in terms of ecological, scientific or aesthetic values.
- The proposal will not affect the natural scenic qualities of the foreshore and existing tree canopies;
- The proposal will not affect the landscape character of the locality; and
- The proposed development is considered suitable for the subject site having regard to existing vegetation, topography and surrounding land uses.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the E3 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

Conclusion

The consistency of the development with the zone objectives and the objectives of the height standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and to promote good design and amenity of the built environment.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed

development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Clare Findlay
aSquare Planning Pty Ltd

Date: 14 February 2020

APPENDIX 2

PLANS

Sheet Number	Drawing Title
DA.101	Cover Sheet
DA.102	Site Analysis Plan
DA.301	Basement Floor Plan
DA.302	Ground Floor Plan
DA.303	First Floor Plan
DA.304	Roof Plan
DA.401	South (Street) Elevation
DA.402	North Elevation
DA.403	East Elevation
DA.404	West Elevation
DA.501	Long Section
DA.502	Short Section
DA.901	Area Calculations
DA.902	Materials Board
DA.903	Site Waste & Recycling Mngmt & Exc Plan
DA.911	Shadow Diagrams - 9am June
DA.912	Shadow Diagrams - 12pm June
DA.913	Shadow Diagrams - 3pm June
DA.914	Shadow Diagrams - Elevational 42 Bower
DA.915	Shadow Diagrams - Elevational 46 Bower

BASIX COMMITMENTS:

Commitments to be read in conjunction with the BASIX Certificate prepared by Aspect Z

THERMAL COMFORT

- Concrete block walls to basement level. R1.0 insulation to walls of lounge and stair
- Ground floor and level 1 wall construction: R1.2 cavity board insulation to double brick walls
- 150mm min Concrete floor slabs, Stone/tiles to ground floor, timber to upper, tiles to wet areas.
- R1.0 insulation under basement and ground floor (excluding garage) slabs on ground
- R2.5 insulation (eg. 50mm soffit board) insulation to ceiling of first floor
- Medium/concrete roof colour simulated. R1.0 insulation to top of roof slabs.
- Glazing throughout to meet performance: Uw=<3.6, SHGCw: 0.54 +/-10% . CSIRO default equivalent of thermally broken aluminum frames with double glazed clear, with air fill (please see note A below).
- Skylights to be double glazed clear, to meet performance of : Uw=<4.2, SHGCw: 0.72, no external or internal shading required to skylight
- IC rated (coverable, non vented) LED downlights simulated, maximum allocation: Lounge: 6, Powder: 1, Study: 4, Remainder ground floor: 10, TV Room: 4, Master Suite: 10, Master Ens: 2, Bed 2: 5, Bed 2 Ens: 2, Laundry: 2, Bed 3: 4, Bed 3 Ens: 2, Foyer: 3
- Exhaust fans throughout to be sealed units (ie, self closing dampers included) – allocated to bathrooms & WCs, laundry & kitchen range.

When all are implemented, the above specifications achieve compliant loads of:

Heating Load achieved: 39.0 MJ/m2.annum, Cooling Load achieved: 26.0 MJ/m2.annum

WATER SAVINGS

The BASIX target for water savings across the project is 40%.

- Landscaped areas: 332.6m2 maximum nominated landscaping, including a commitment of at least 100m2 low water use/indigenous plants.
- 10,000L rainwater tank with minimum of 141m2 roof catchment
- Collected rainwater for reuse in landscaping and pool top up
- 3 Star rated, low flow rate showerheads throughout (flow rate >4.5/min & <=6L/min)
- 4 star rated toilets (minimum)
- 6 Star rated kitchen tap (minimum)
- 6 Star rated basin taps (minimum)
- Maximum Pool/Spa capacity of 20.5kL, unshaded, no pool cover installed.

ENERGY COMMITMENTS

The BASIX target for energy savings across the project is 50%.

- Electric heat pump hot water system, min STCs 36
- Three phased air conditioning system installed to at least one bedroom and one living space. Zoned system, Min EER/COP 3.0
- Mechanical exhausts to kitchen rangehood exhaust, laundry and bathroom exhausts ducted to façade/roof, with manual on/off controls.
- Gas cooktop & electric oven
- LED or fluorescent lighting throughout dwelling
- Install an unshaded, external clothes line
- Install an additional shaded, internal clothes line
- Timer to pool pump installed.
- Solar, Gas boosted heating installed to pool
- Install a photovoltaic cell solar power system, with a peak output of at least 1.1 kW (minimum requirement for compliance only-- a larger system is noted)

DEVELOPMENT APPLICATION
44 BOWER STREET, MANLY

PREPARED ON BEHALF OF:

JUSTINE & CHRIS ACRET

DRAWING SCHEDULE :		SCALE :
DA.101	Cover Sheet	NTS
DA.102	Site Analysis Plan	1:150
DA.301	Basement Floor Plan	1:100
DA.302	Ground Floor Plan	1:100
DA.303	First Floor Plan	1:100
DA.304	Roof Plan	1:100
DA.401	South (Street) Elevation	1:100
DA.402	North Elevation	1:100
DA.403	East Elevation	1:100
DA.404	West Elevation	1:100
DA.501	Long Section	1:100
DA.502	Short Section	1:100
DA.901	Area Calculations	1:200
DA.902	Materials Board	NTS
DA.903	Site Waste & Recycling Mngmt & Exc Plan	1:100
DA.911	Shadow Diagrams - 9am June	1:250
DA.912	Shadow Diagrams - 12pm June	1:250
DA.913	Shadow Diagrams - 3pm June	1:250
DA.914	Shadow Diagrams - Elevational 42 Bower	NTS
DA.915	Shadow Diagrams - Elevational 46 Bower	NTS

LOCATION PLAN 1:1500

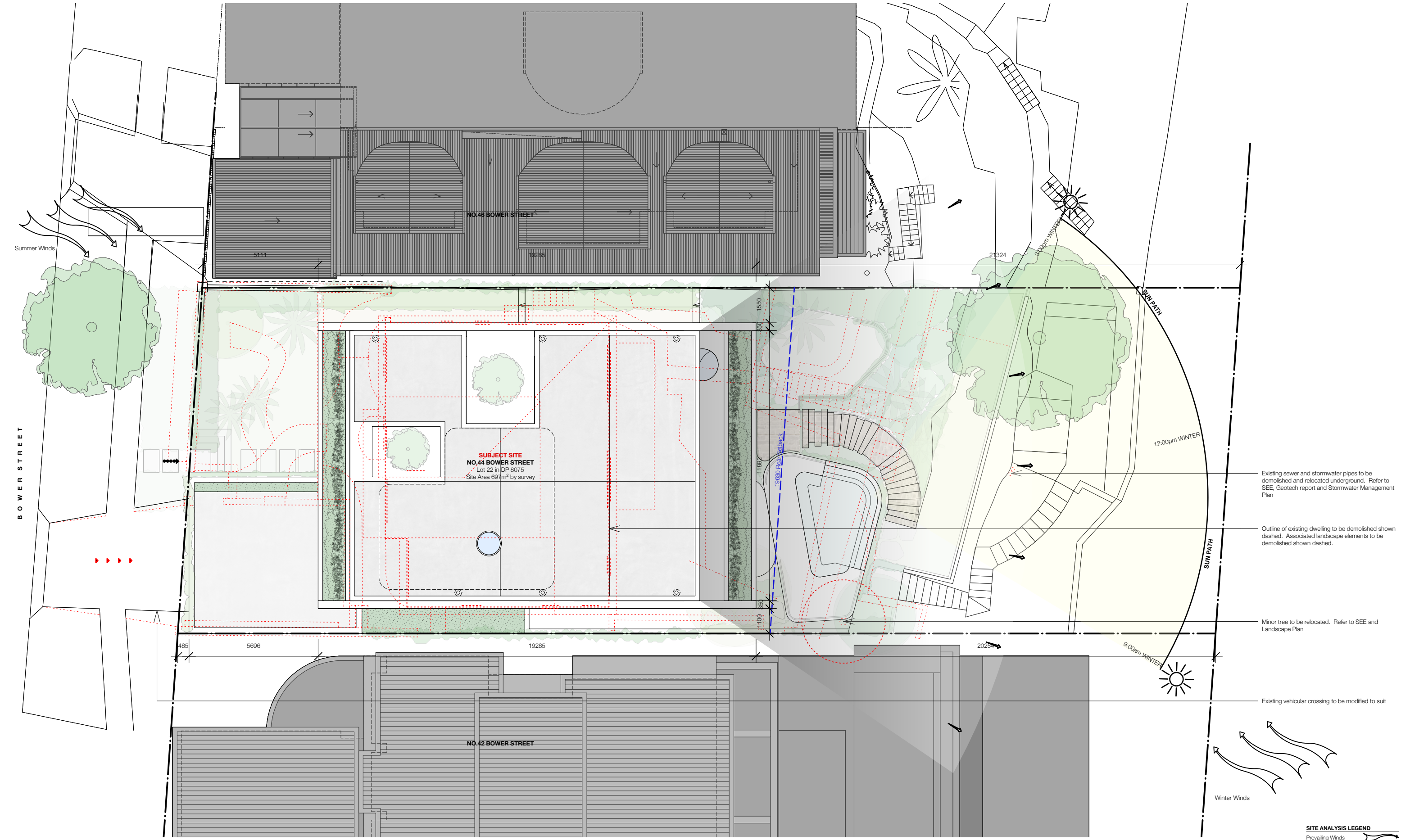


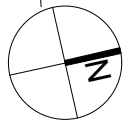
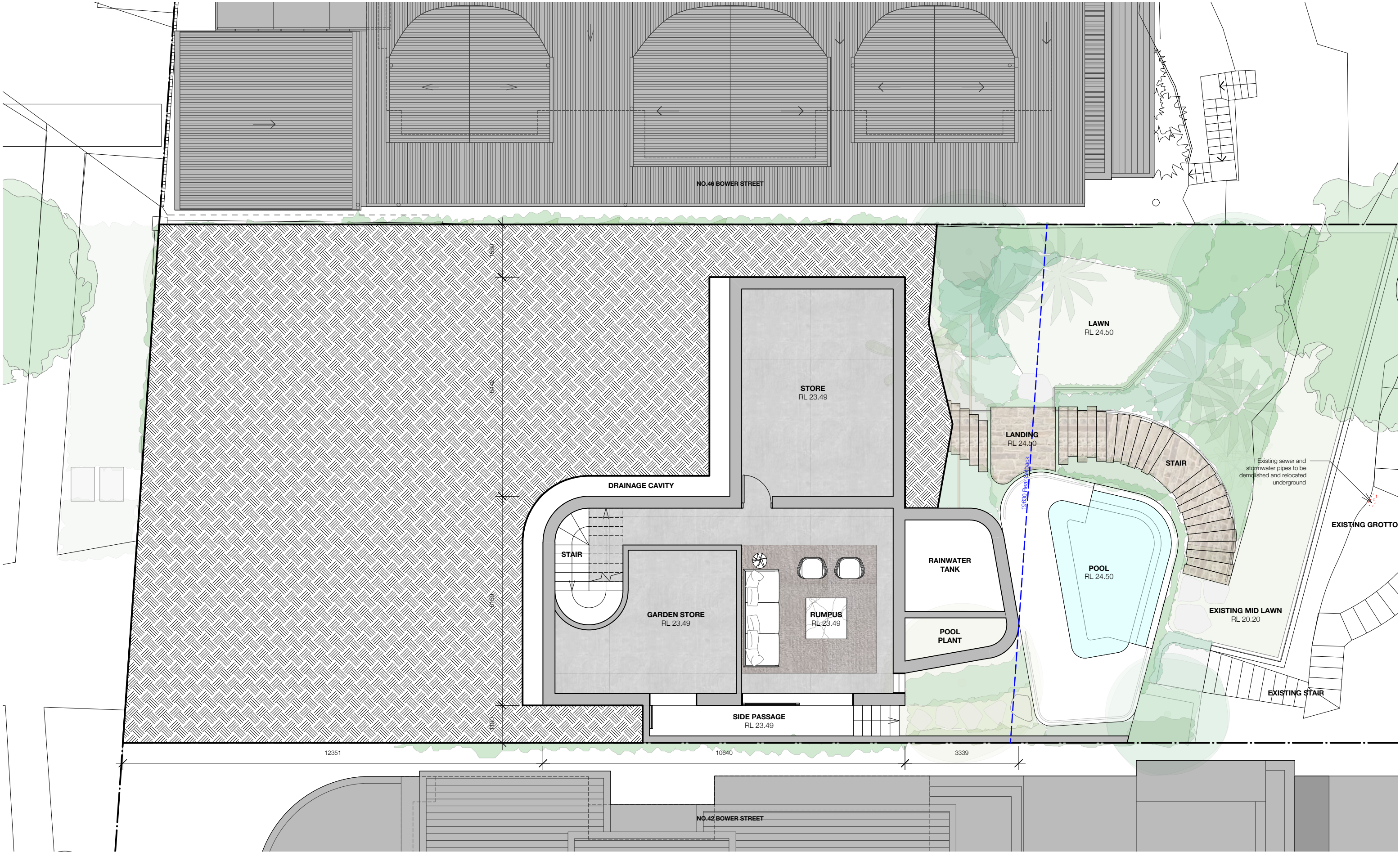
MATERIALS LEGEND

- CN Concrete off-form
- ST Stone Cladding
- RDR Render
- TBR Light weight timber cladding
- W Windows aluminium framed

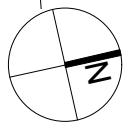
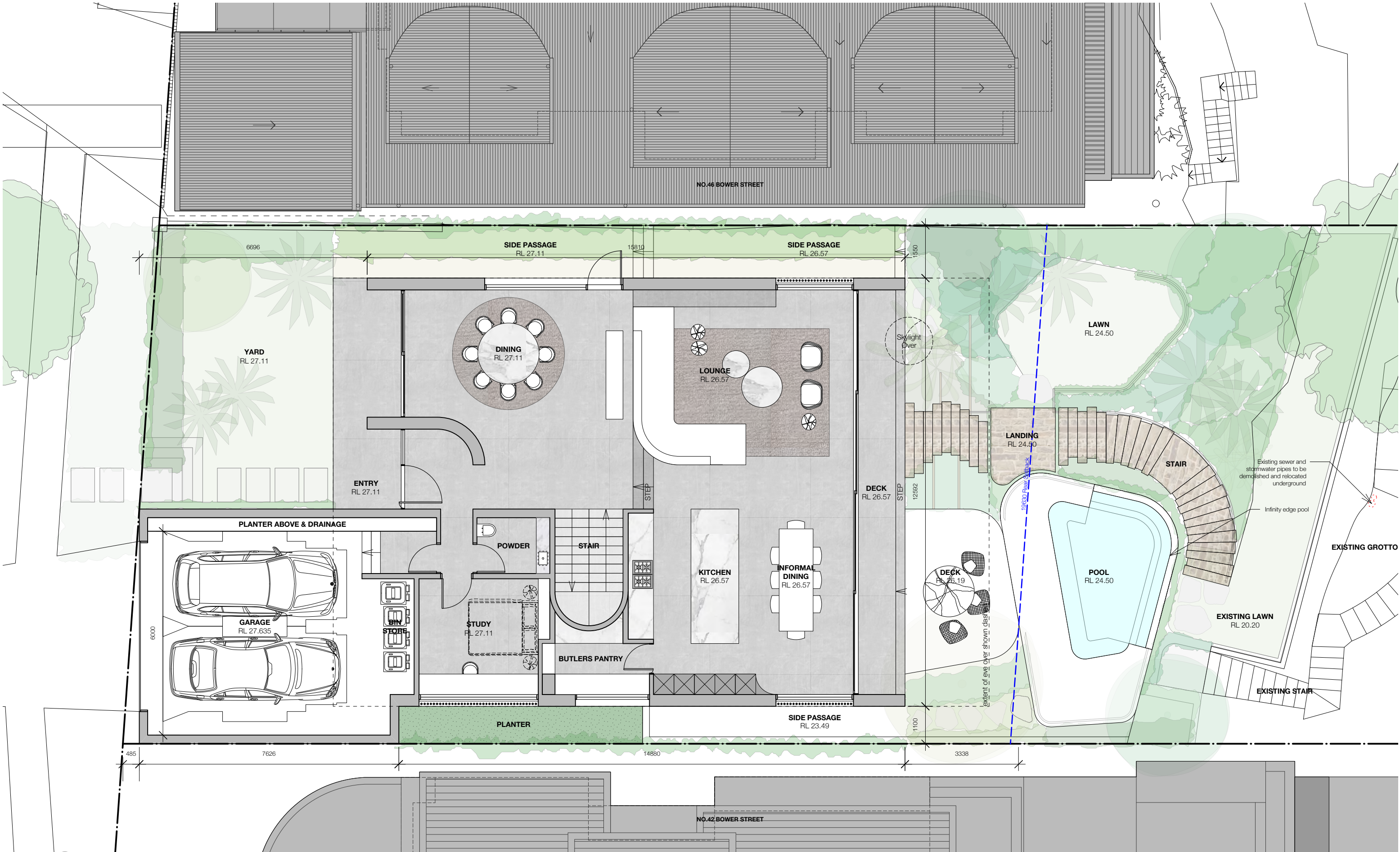
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	A REV.	ISSUED TO COUNCIL FOR DA FOR	KE DRAWN	28/02/20 DATE	Scale NTS	Date 28/02/20	Drawing DA.101





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44 BOWER STREET
MANLY

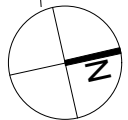
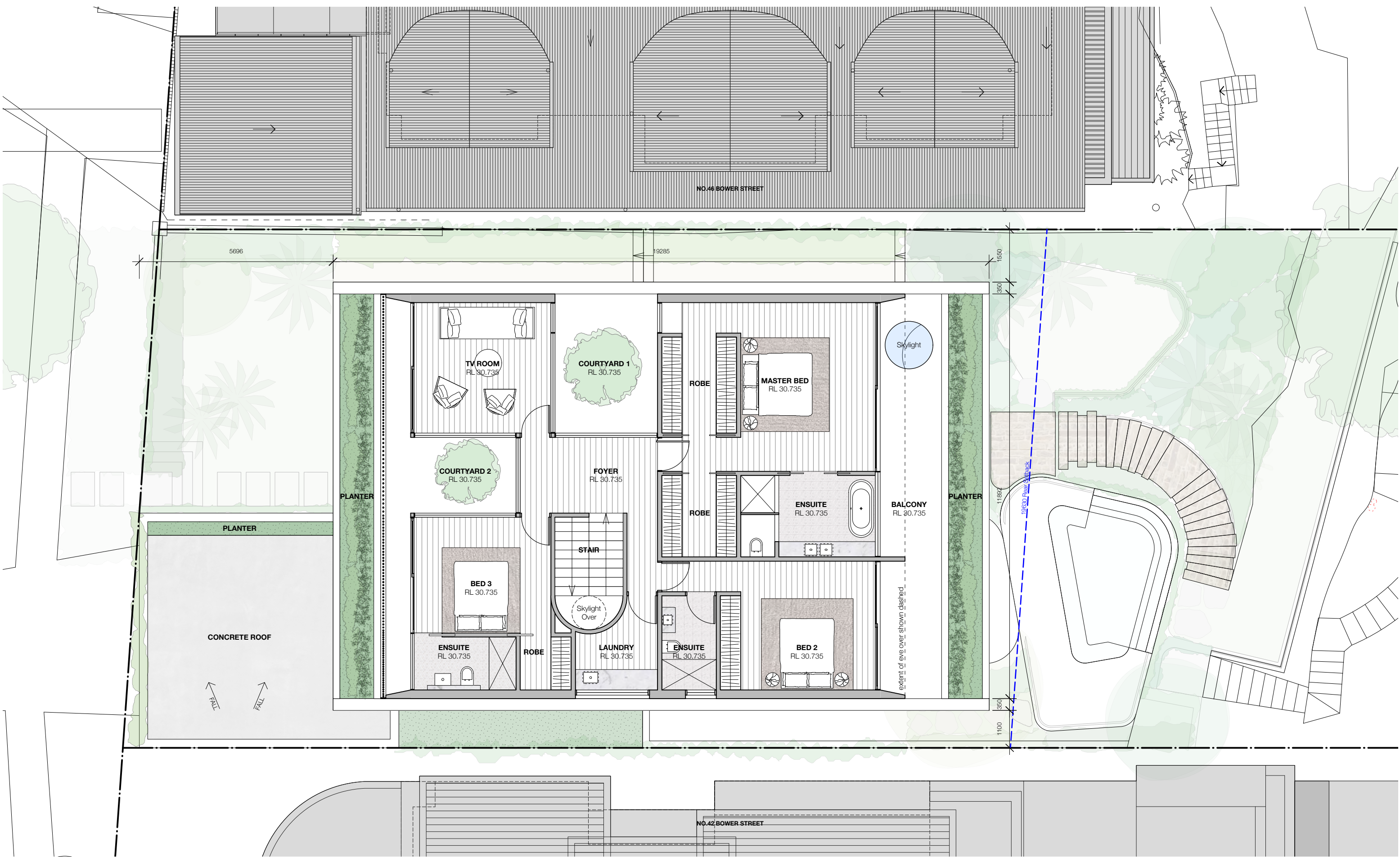
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Drawing
GROUND FLOOR PLAN

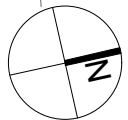
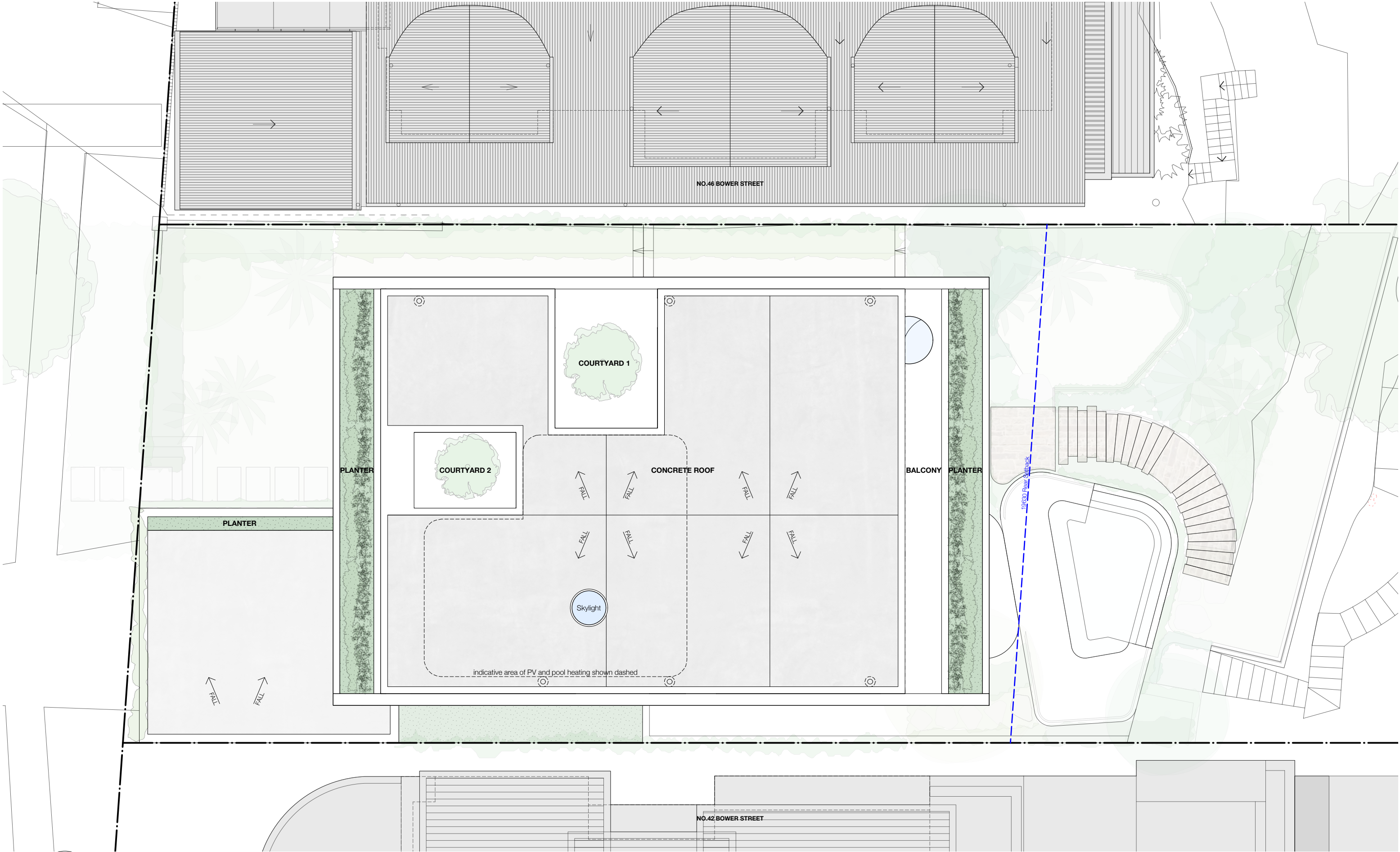
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Date
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Drawing Rev.
DA.302 A

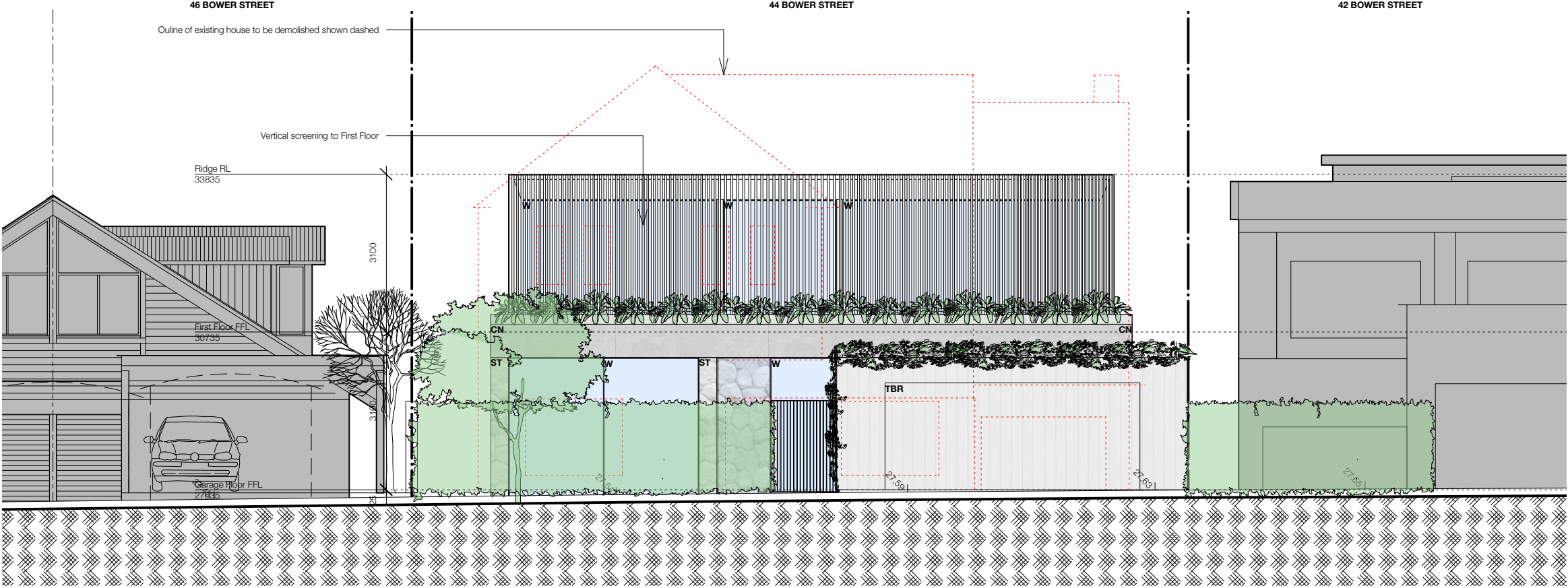


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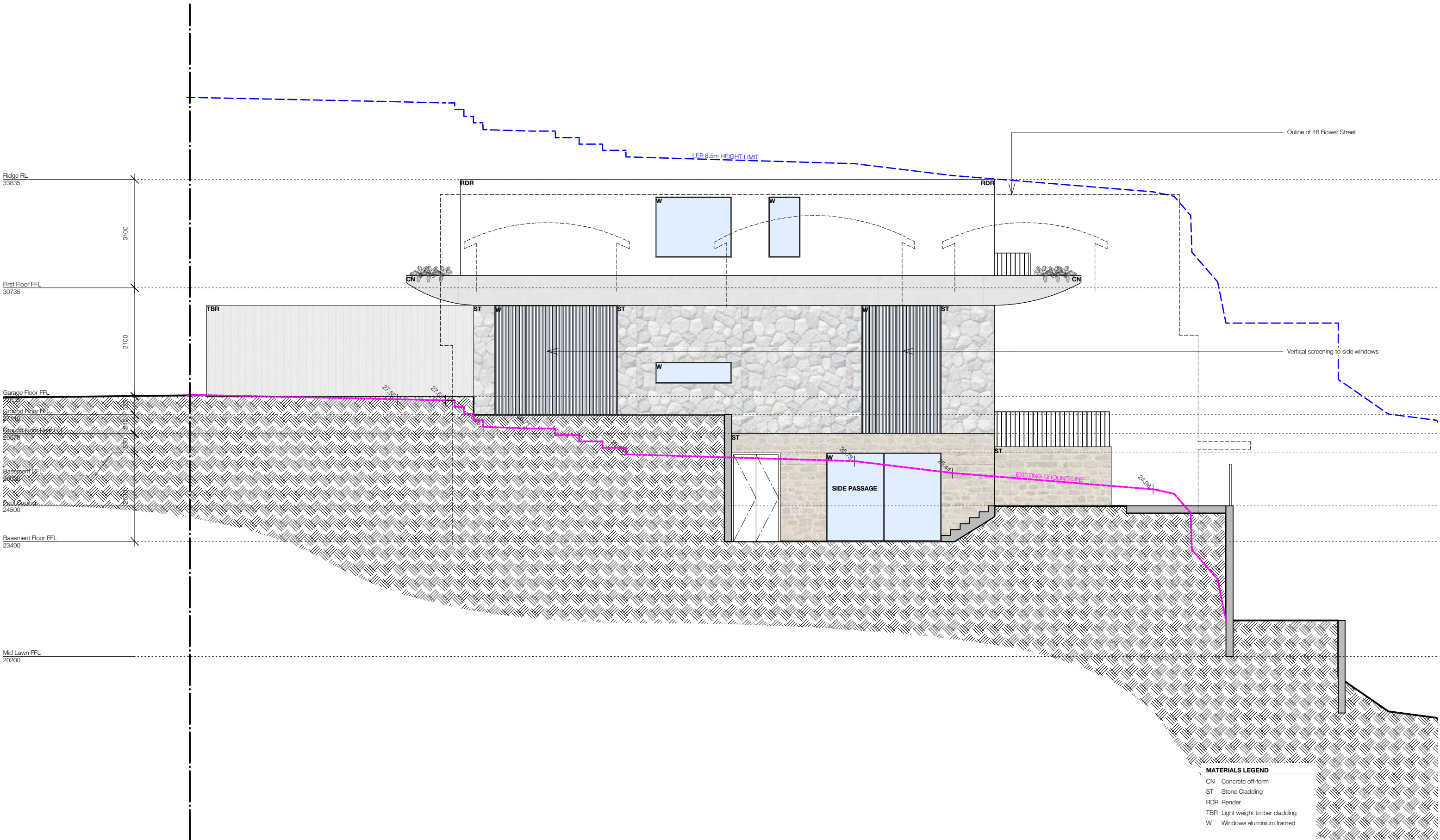
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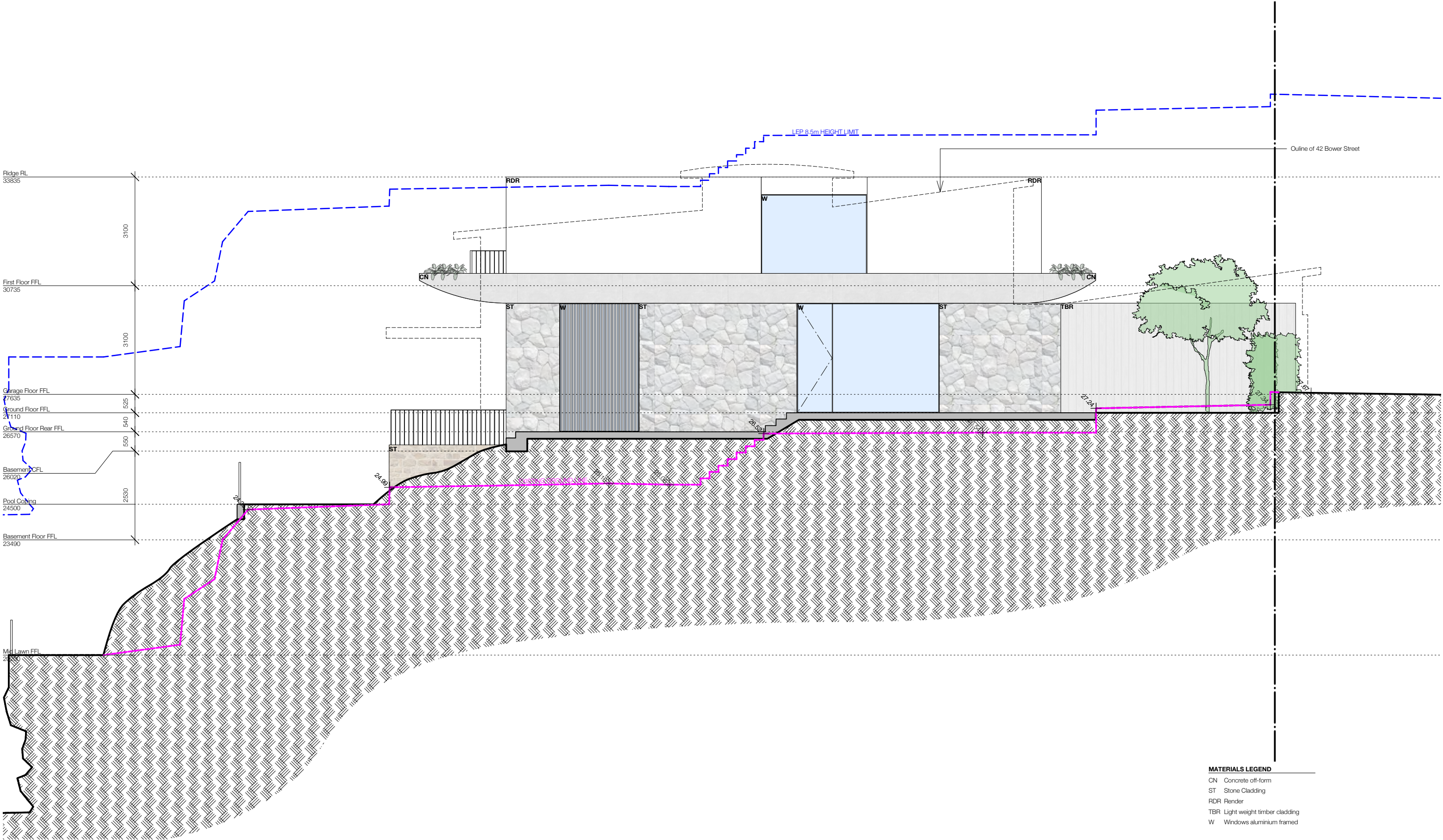
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 - ST Stone Cladding
 - RDR Render
 - TBR Light weight timber cladding
 - W Windows aluminium framed

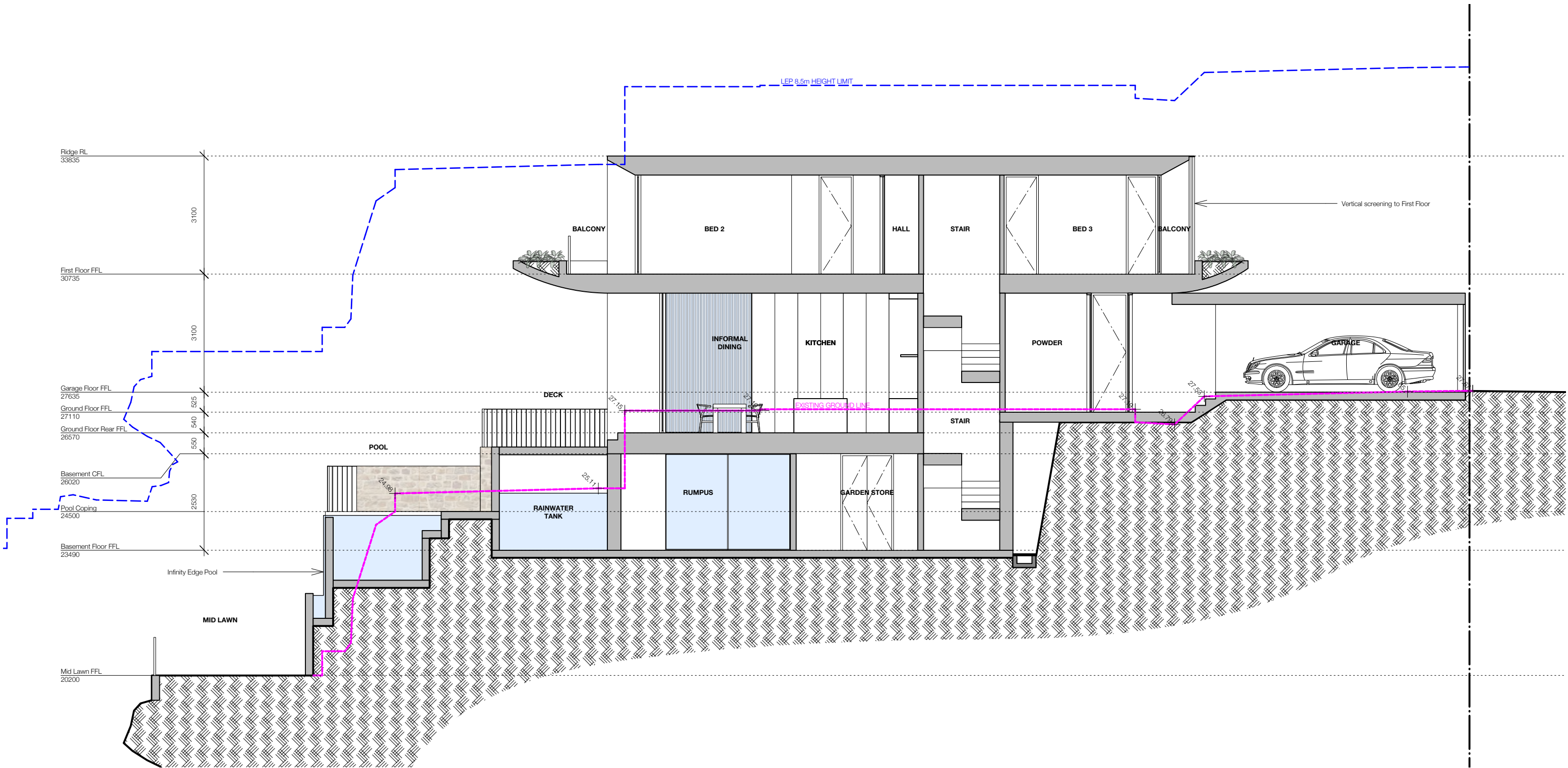
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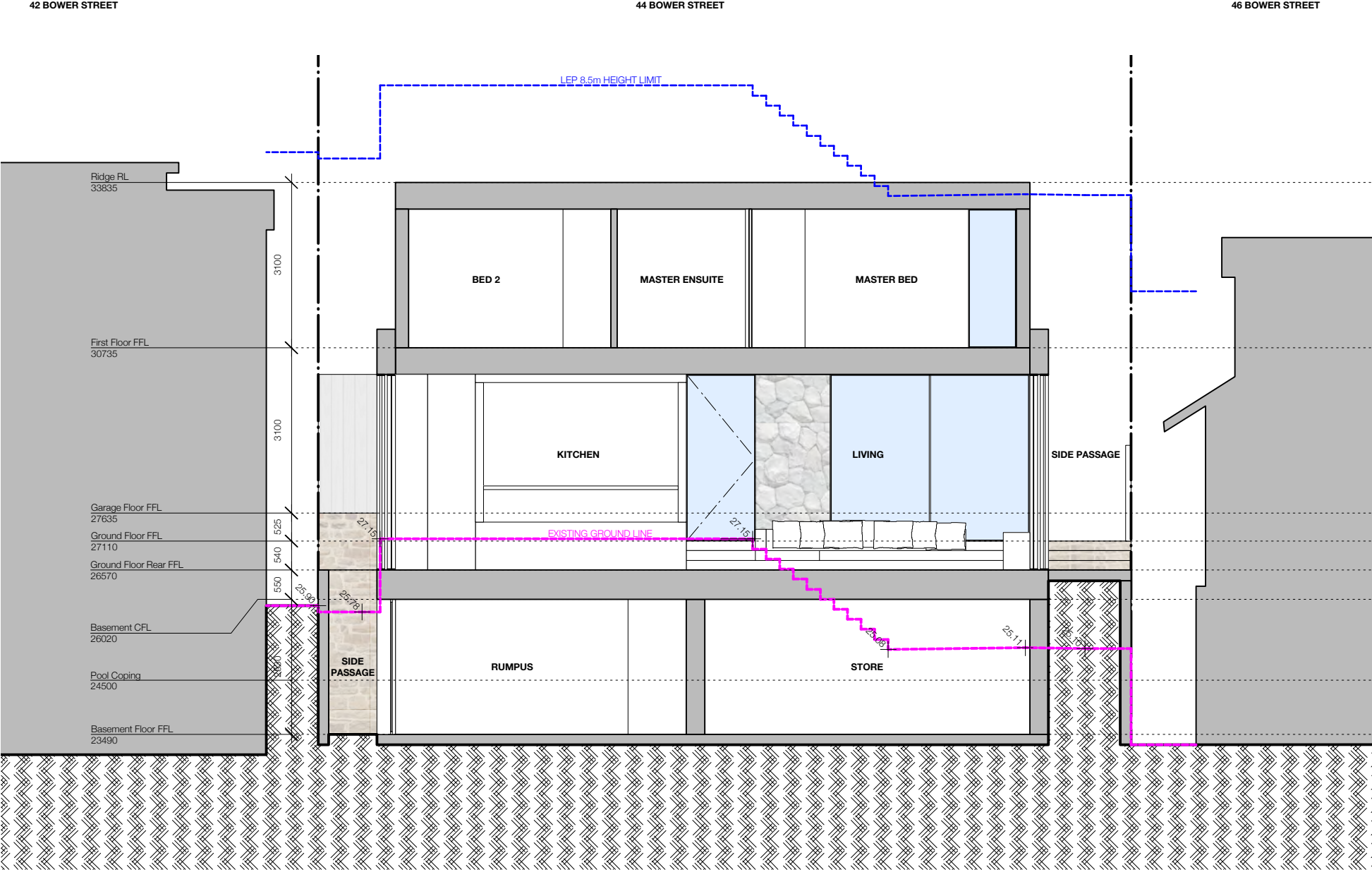


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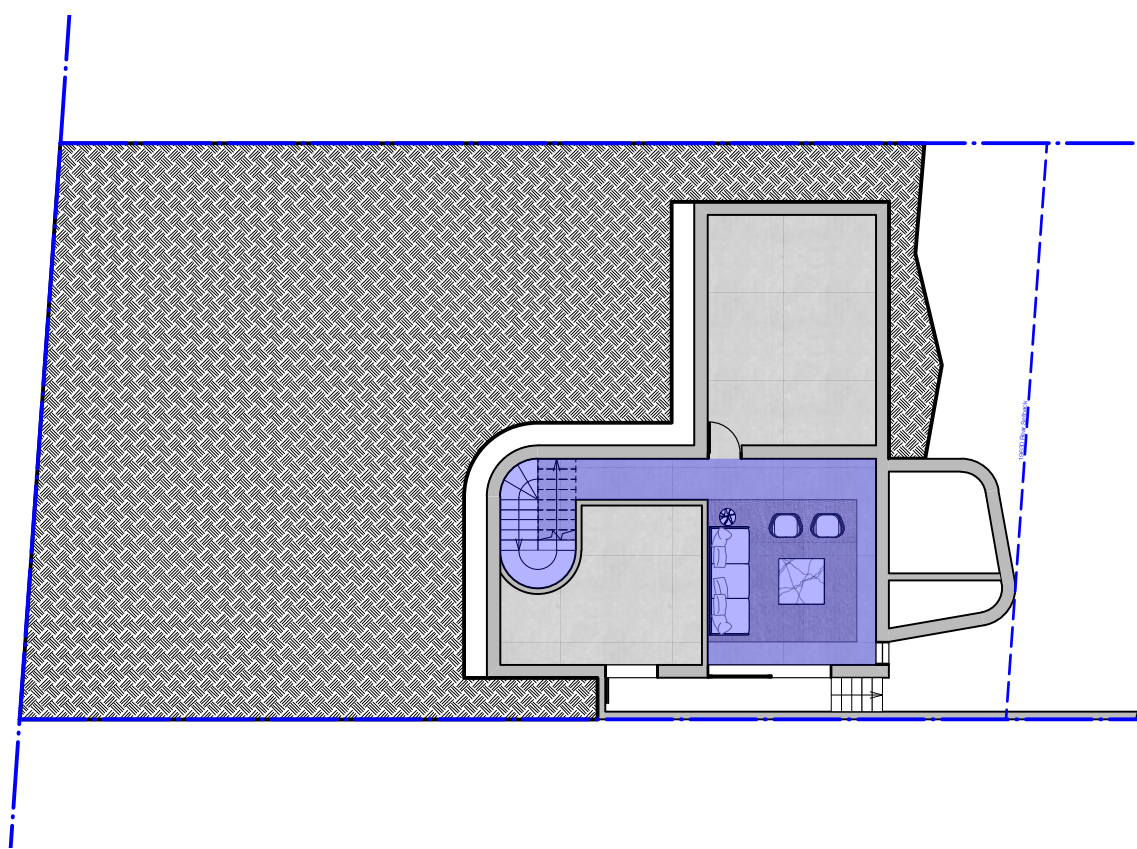
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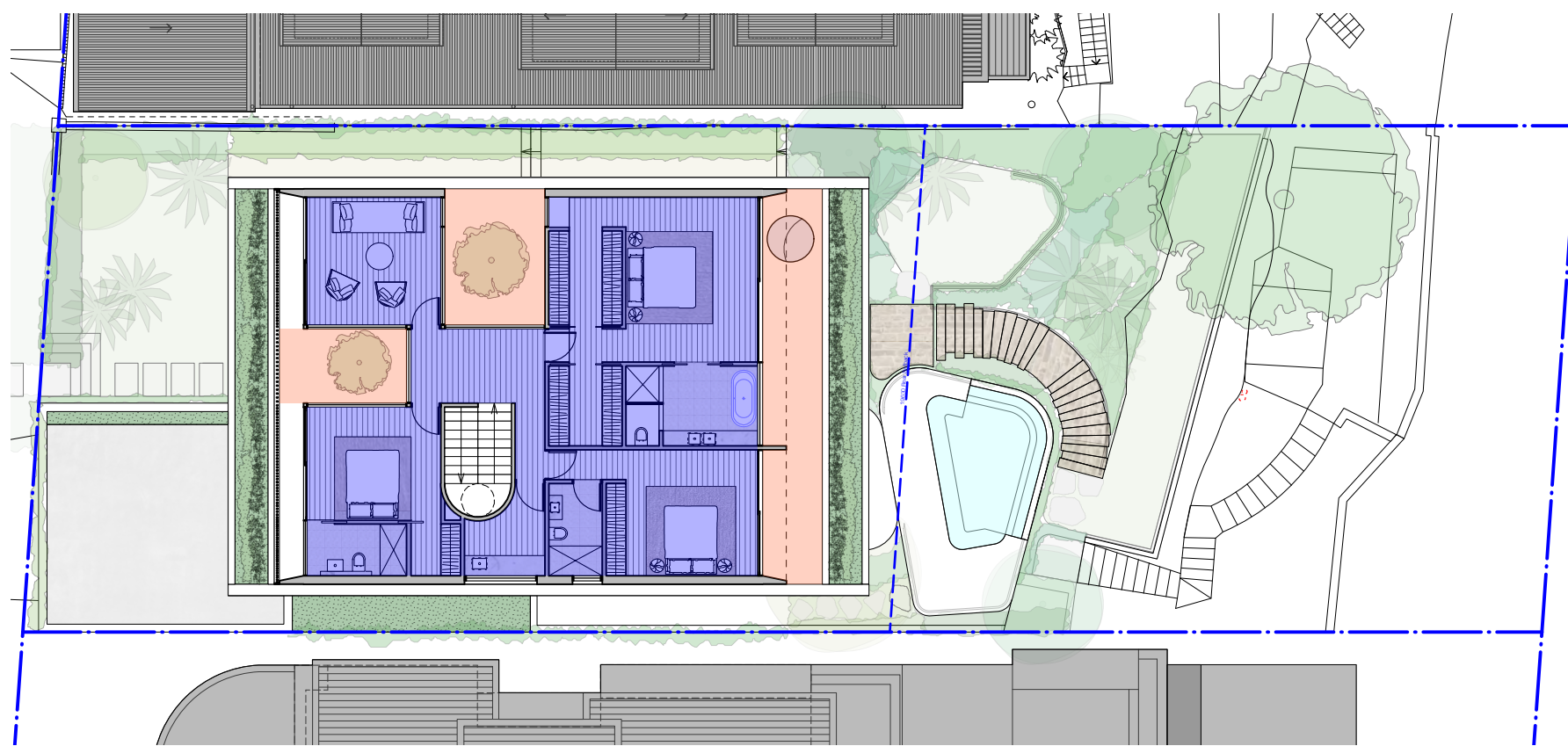




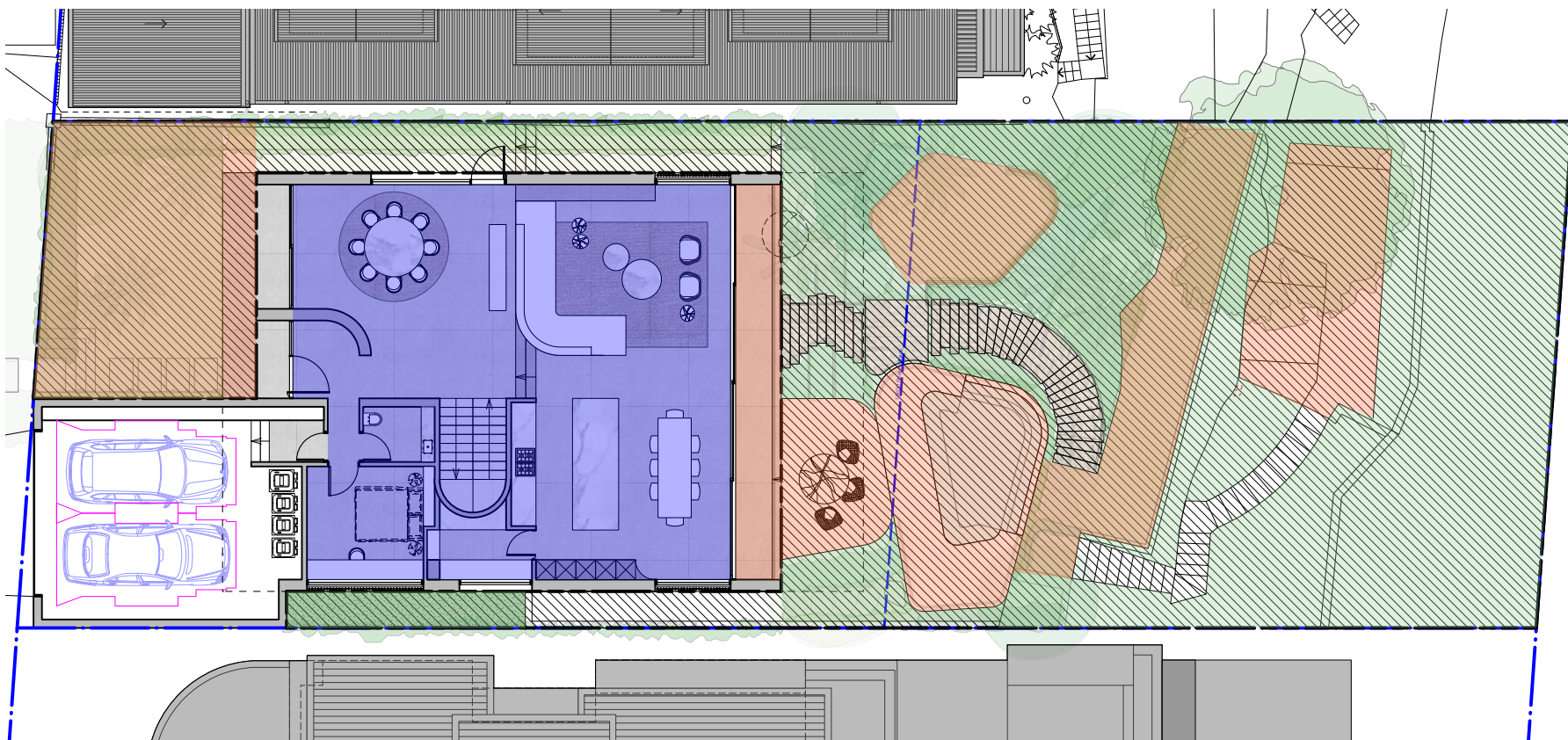
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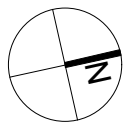
A AREA CALCULATIONS - BASEMENT
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C AREA CALCULATIONS - FIRST FLOOR
Scale: 1:200



B AREA CALCULATIONS - GROUND FLOOR
Scale: 1:200



AREA CALCULATIONS

SITE AREA	697m ²
GROSS FLOOR AREA	
PERMISSIBLE FSR	0.45:1
TARGET GROSS FLOOR AREA PERMISSIBLE	314m ²
BASEMENT FLOOR	34m ²
GROUND FLOOR	153m ²
FIRST FLOOR	129m ²
TOTAL PROPOSED GFA	313m ²
TOTAL PROPOSED FSR	0.45:1
OPEN SPACE - TOTAL	
MIN OPEN SPACE (% OF SITE)	55%
TARGET REQUIRED	383m ²
TOTAL PROPOSED OPEN SPACE	449m ²
	64%
OPEN SPACE - LANDSCAPED	
MIN LANDSCAPED OPEN SPACE (% OF SITE)	35%
TARGET REQUIRED	242m ²
TOTAL PROPOSED LANDSCAPED OPEN SPACE	310m ²
	44%
OPEN SPACE - PRIVATE	
MIN PRIVATE OPEN SPACE	18m ²
GROUND FLOOR	192m ²
FIRST FLOOR	42m ²
TOTAL PROPOSED PRIVATE OPEN SPACE	234m ²

DEVELOPMENT KEY

	PROPOSED FSR
	OPEN SPACE - TOTAL
	OPEN SPACE - LANDSCAPED
	OPEN SPACE - PRIVATE

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CN - Concrete off form



ST - Stone cladding



RDR - Render external wall



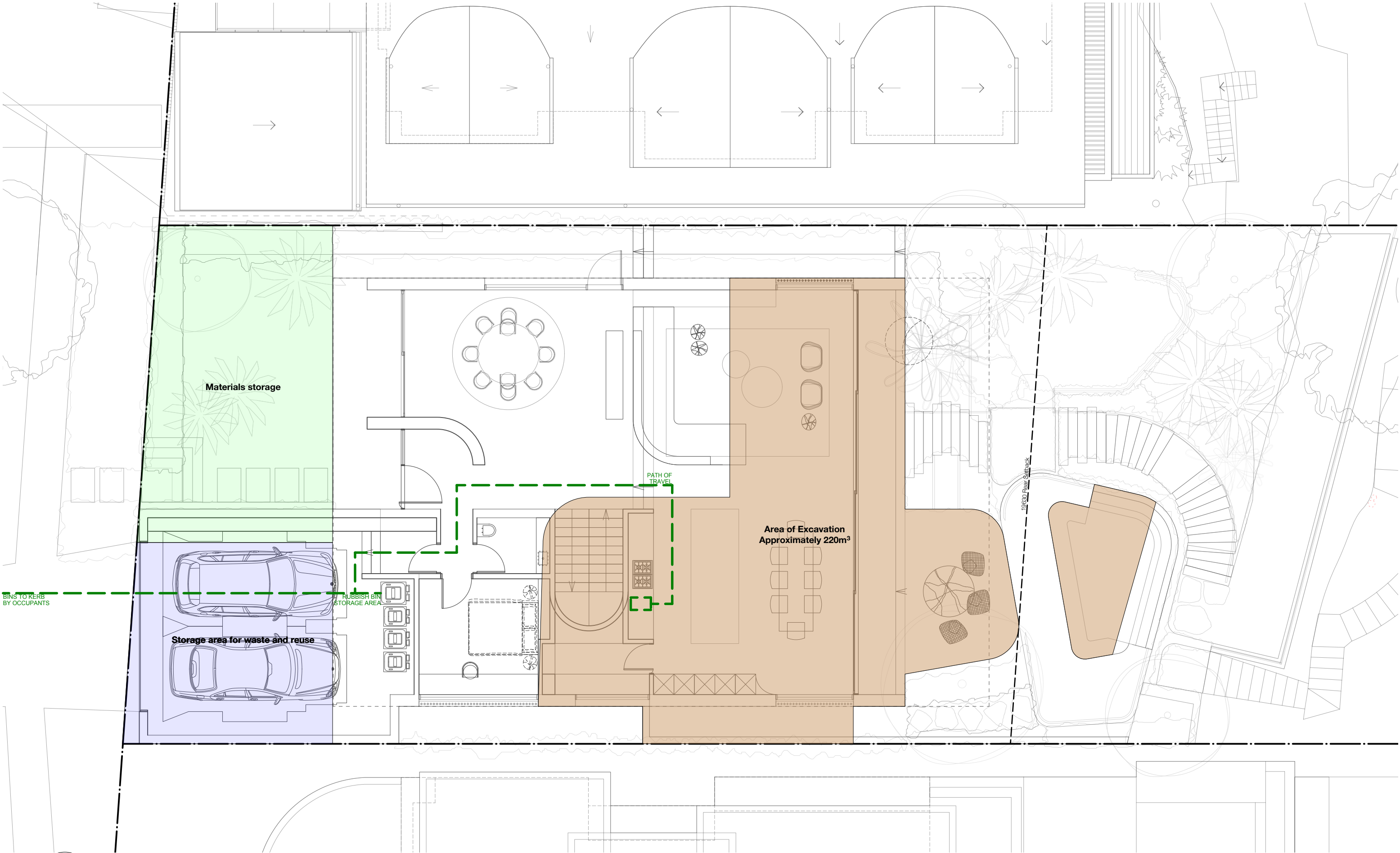
TBR - Vertical timber cladding



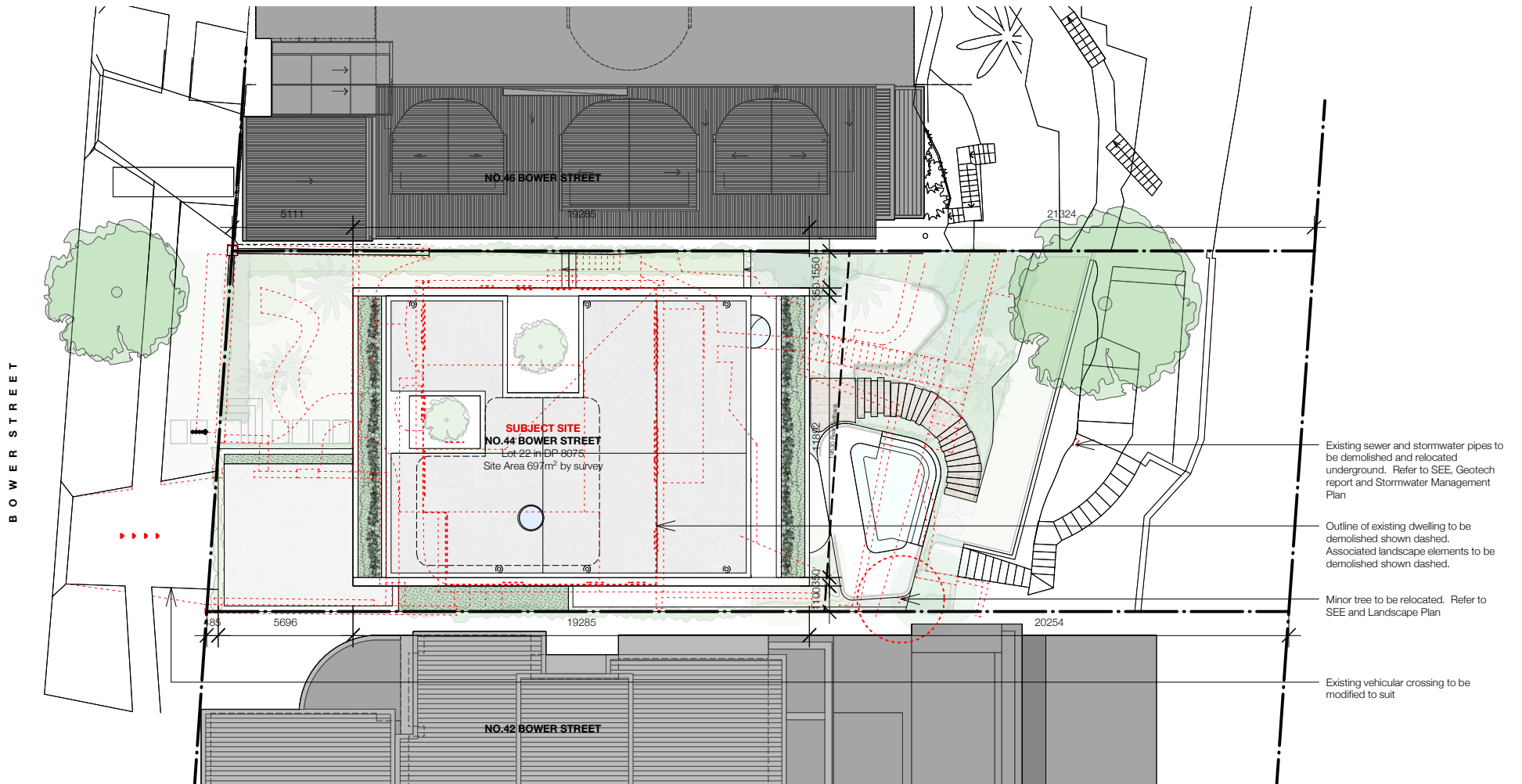
W - Windows Aluminium framed

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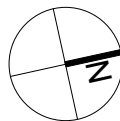


SITE ANALYSIS LEGEND

- Prevailing Winds
- Vehicle Entry
- Pedestrian Entry
- Views
- Trees to be removed
- To be demolished

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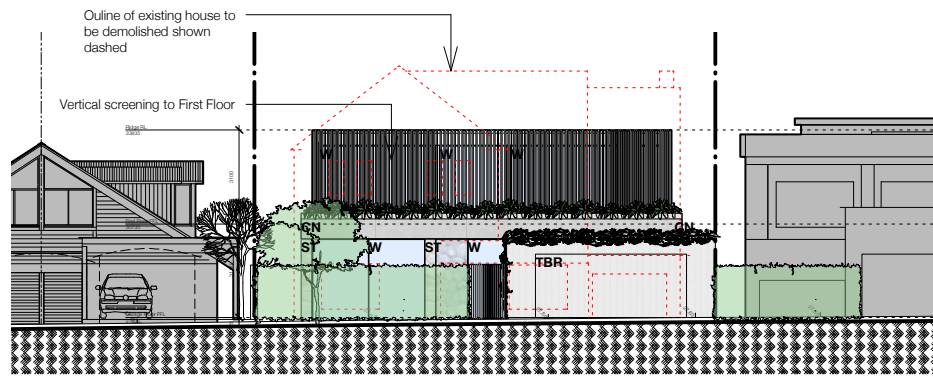
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NOTIFICATION PLANS - SITE PLAN

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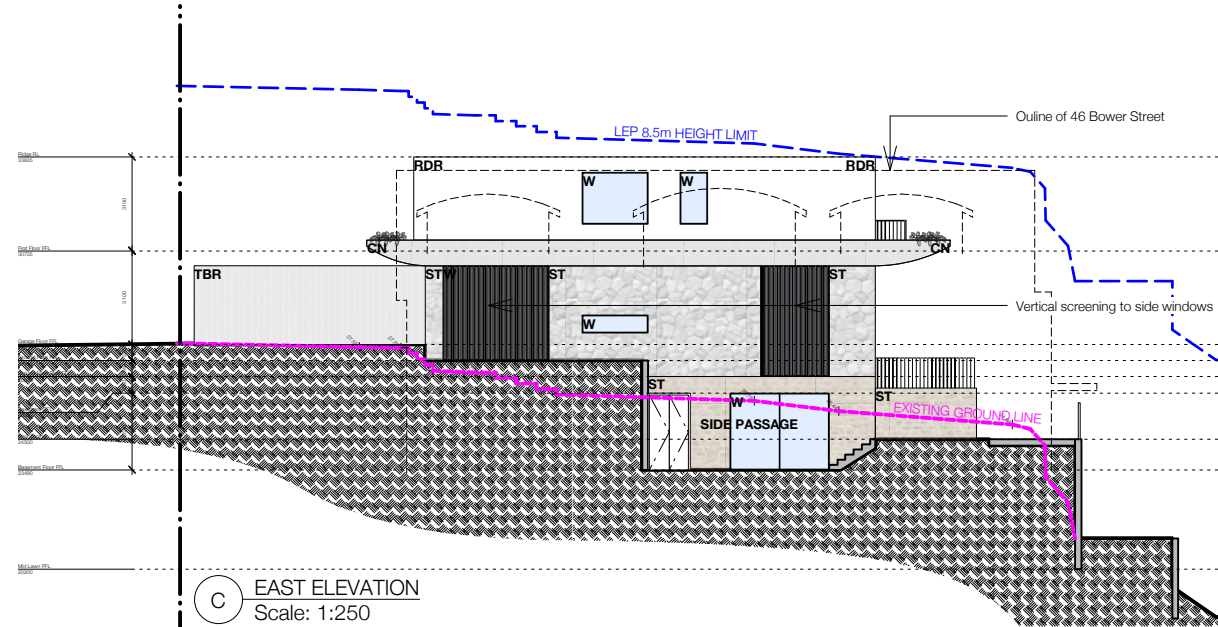
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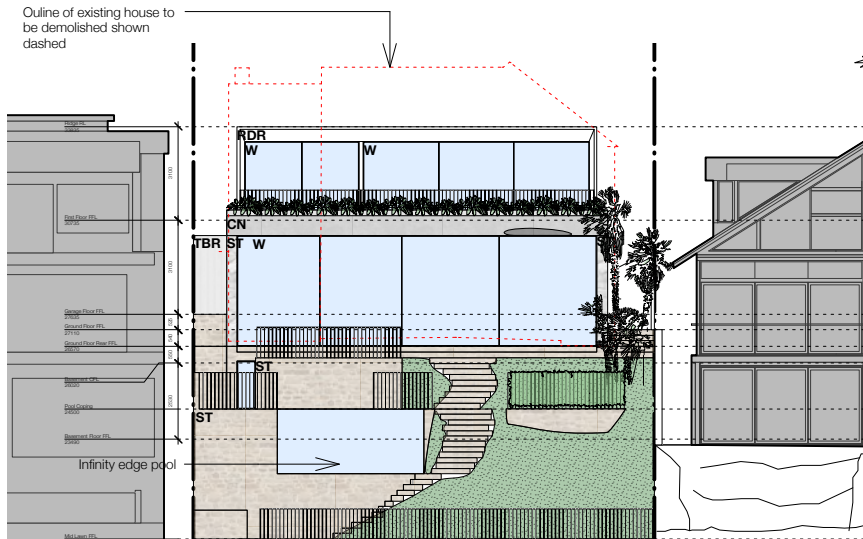
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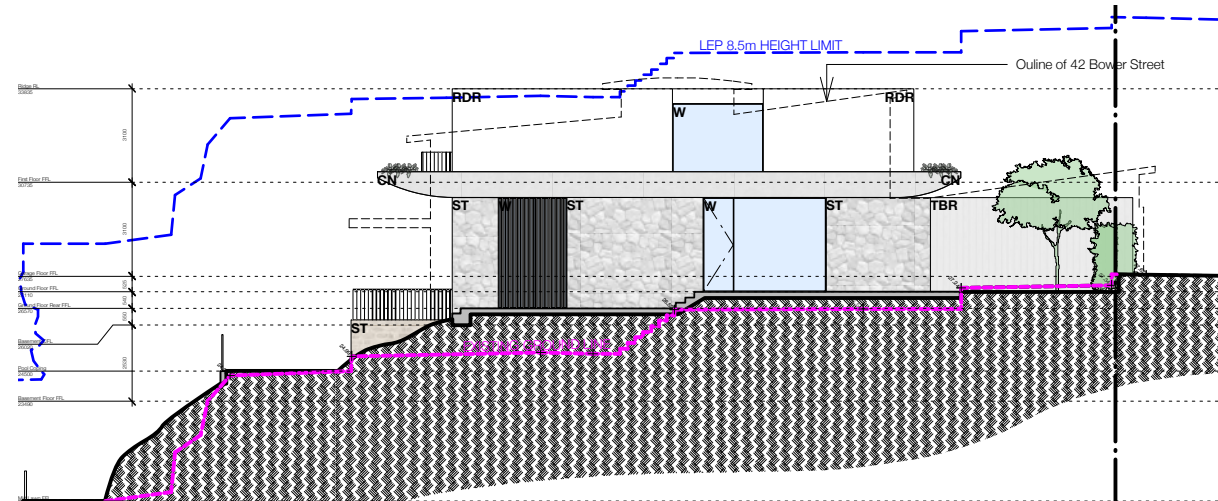
A SOUTH (STREET) ELEVATION
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C EAST ELEVATION
Scale: 1:250



B NORTH ELEVATION
Scale: 1:250



D WEST ELEVATION
Scale: 1:250

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Do Not Scale Off Drawing. Verify All Dimensions On Site Prior To Construction.
To Be Read In Conjunction With All Other Consultant's Drawings.
The Architect To Be Immediately Notified Of Any Discrepancies.

**madeleine
blanchfield
architects**
pty ltd

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Registered Architect 7308
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Paddington NSW 2021
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www.madeleineblanchfield.com
+61 2 9212 3343

A ISSUED TO COUNCIL FOR DA
REV. FOR

KE 28/02/20
DRAWN DATE

Project
ACRET RESIDENCE
44 BOWER STREET
MANLY

0 1 2 3 4 5 M

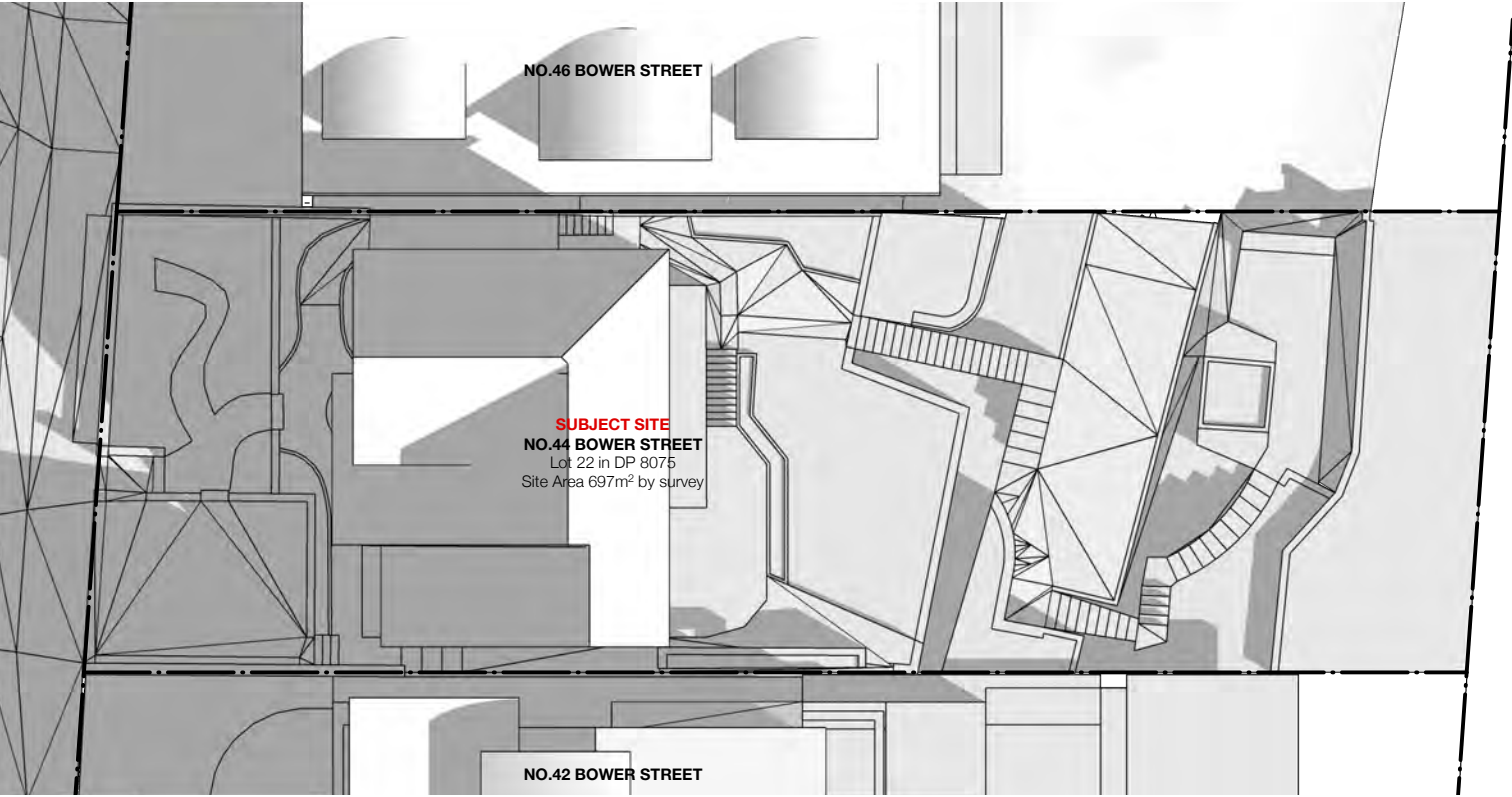
FOR DEVELOPMENT APPLICATION ONLY

Drawing
NOTIFICATION PLANS - ELEVATIONS

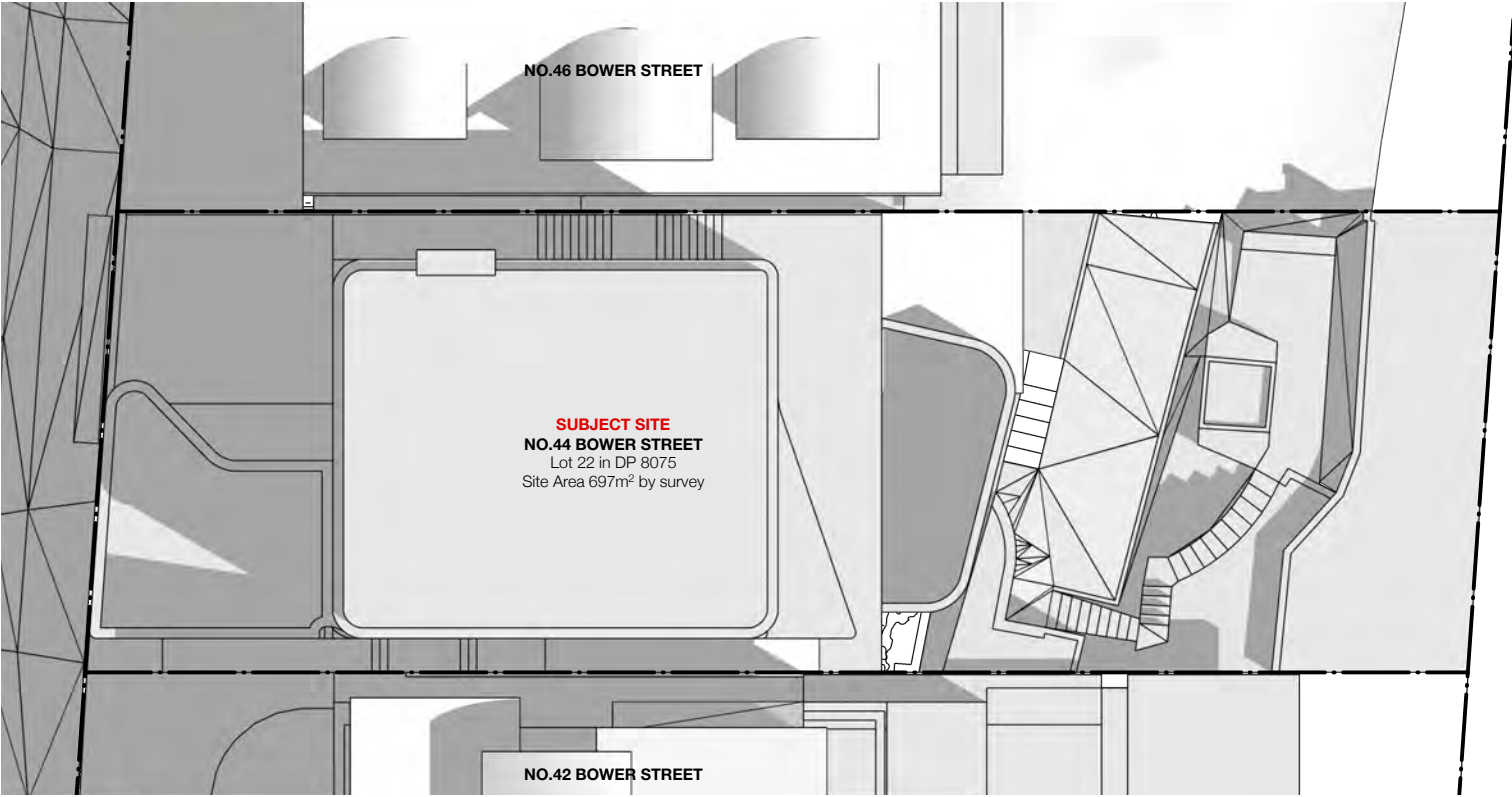
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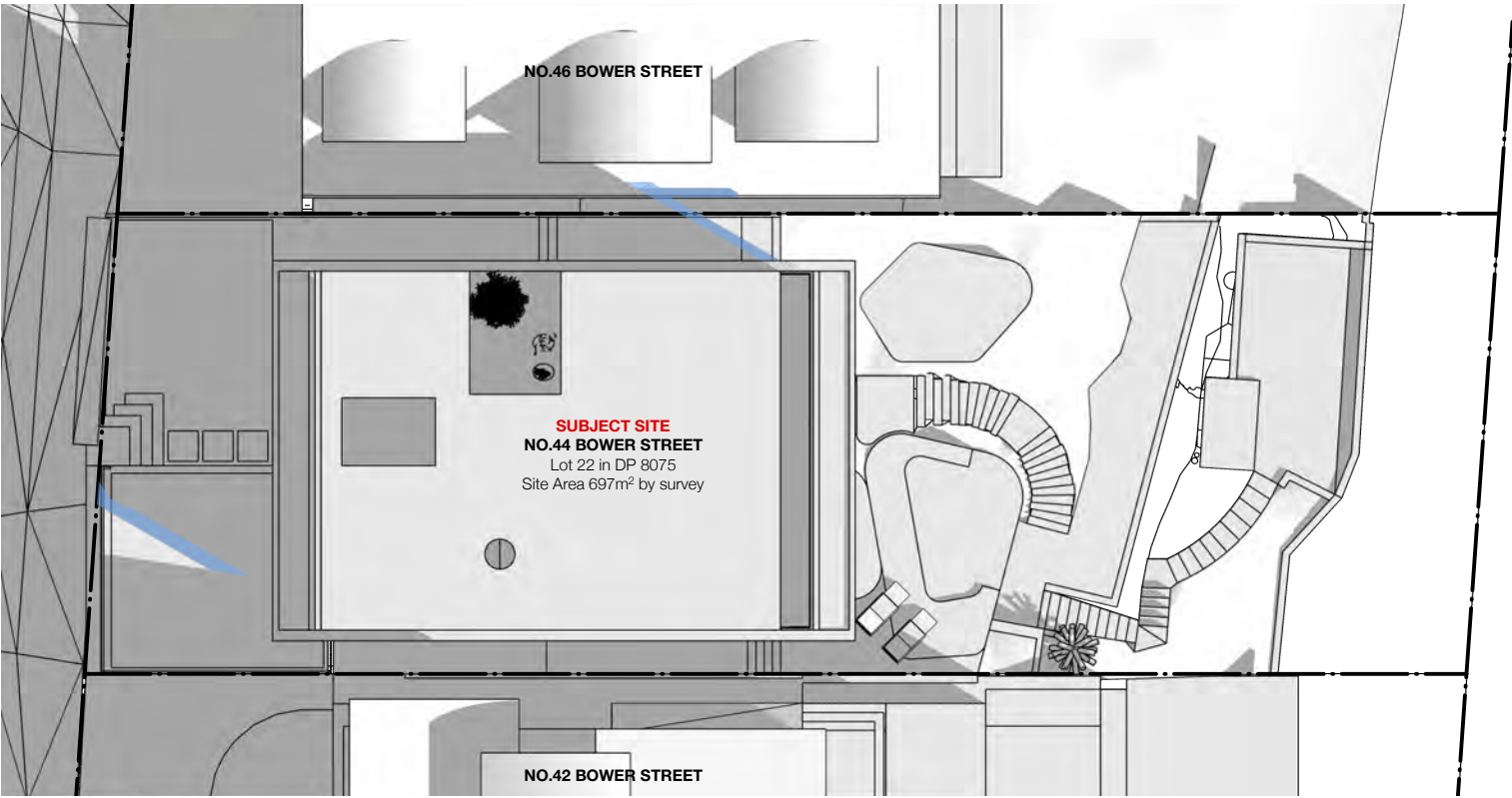
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DA.905
Rev.
A



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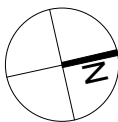


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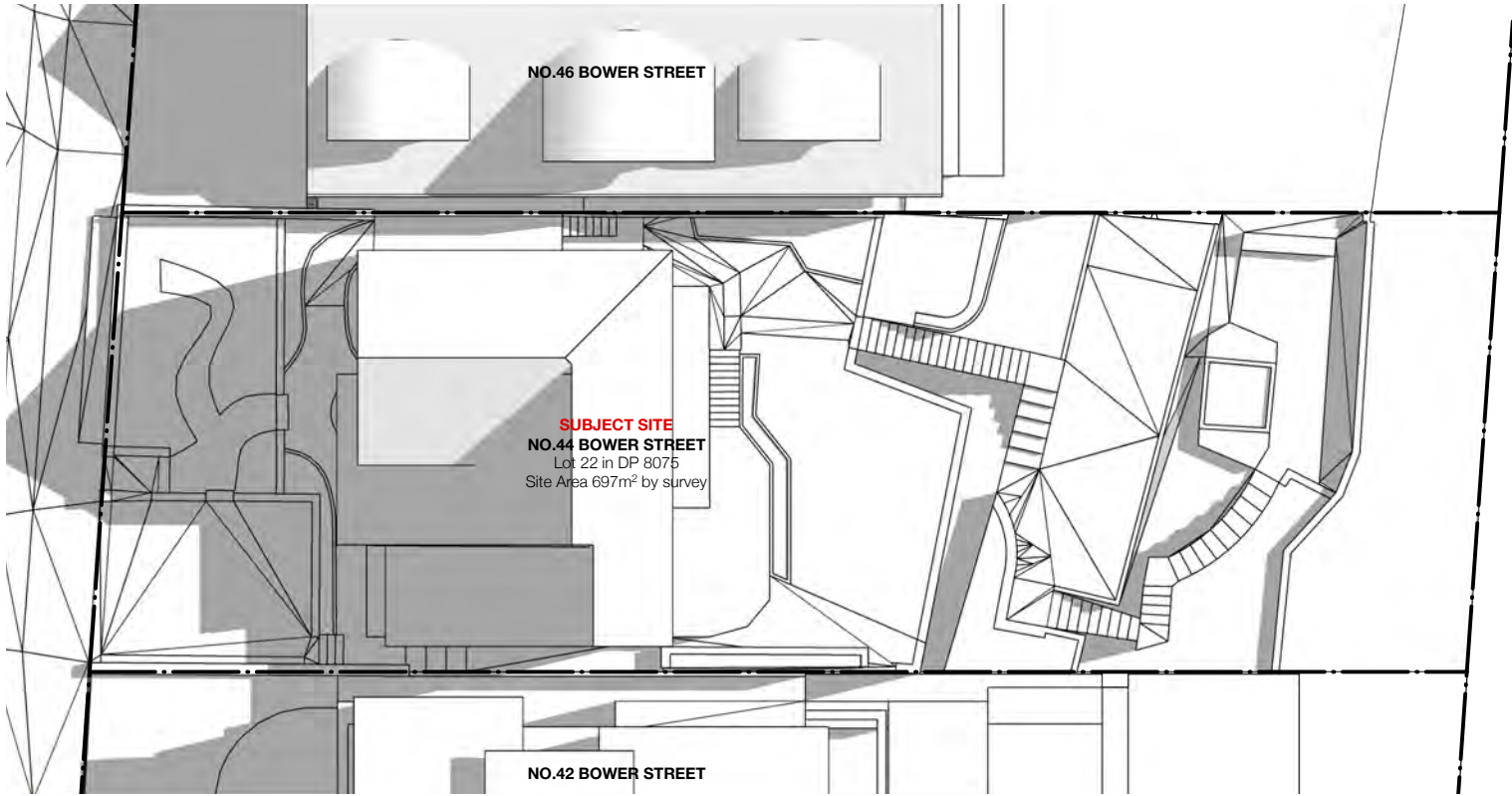


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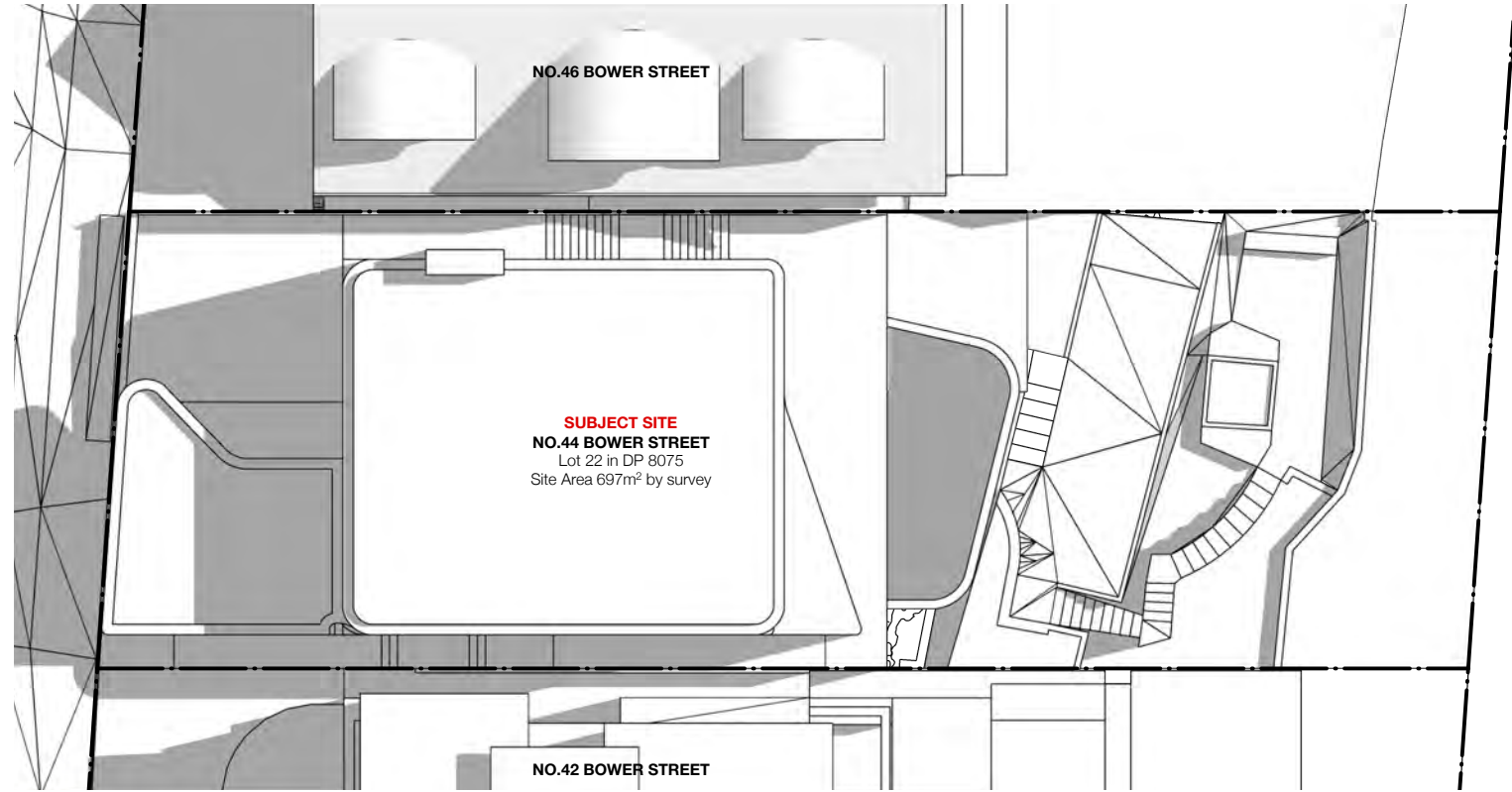
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REDUCTION TO SHADOW



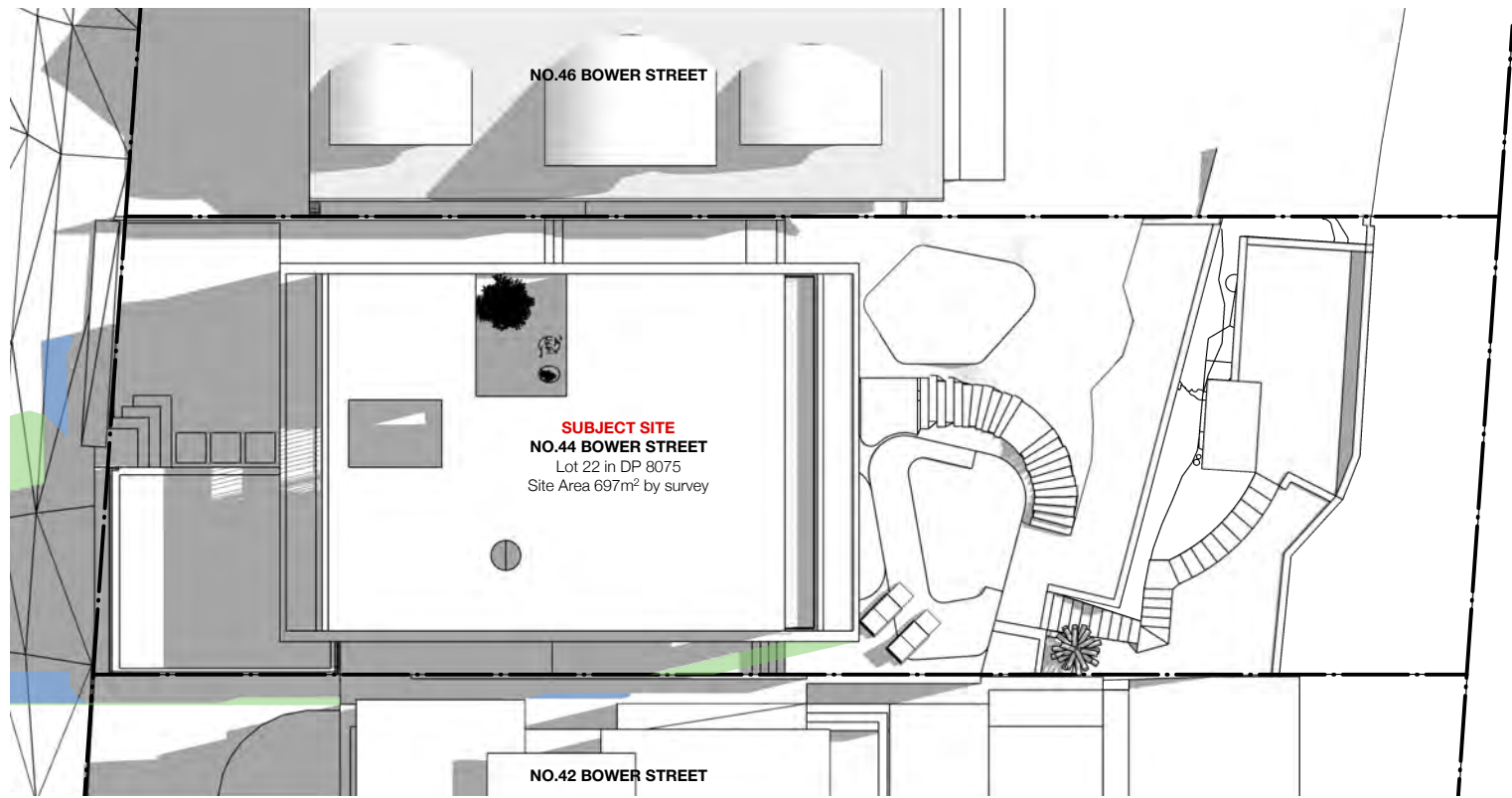
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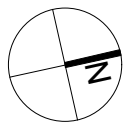


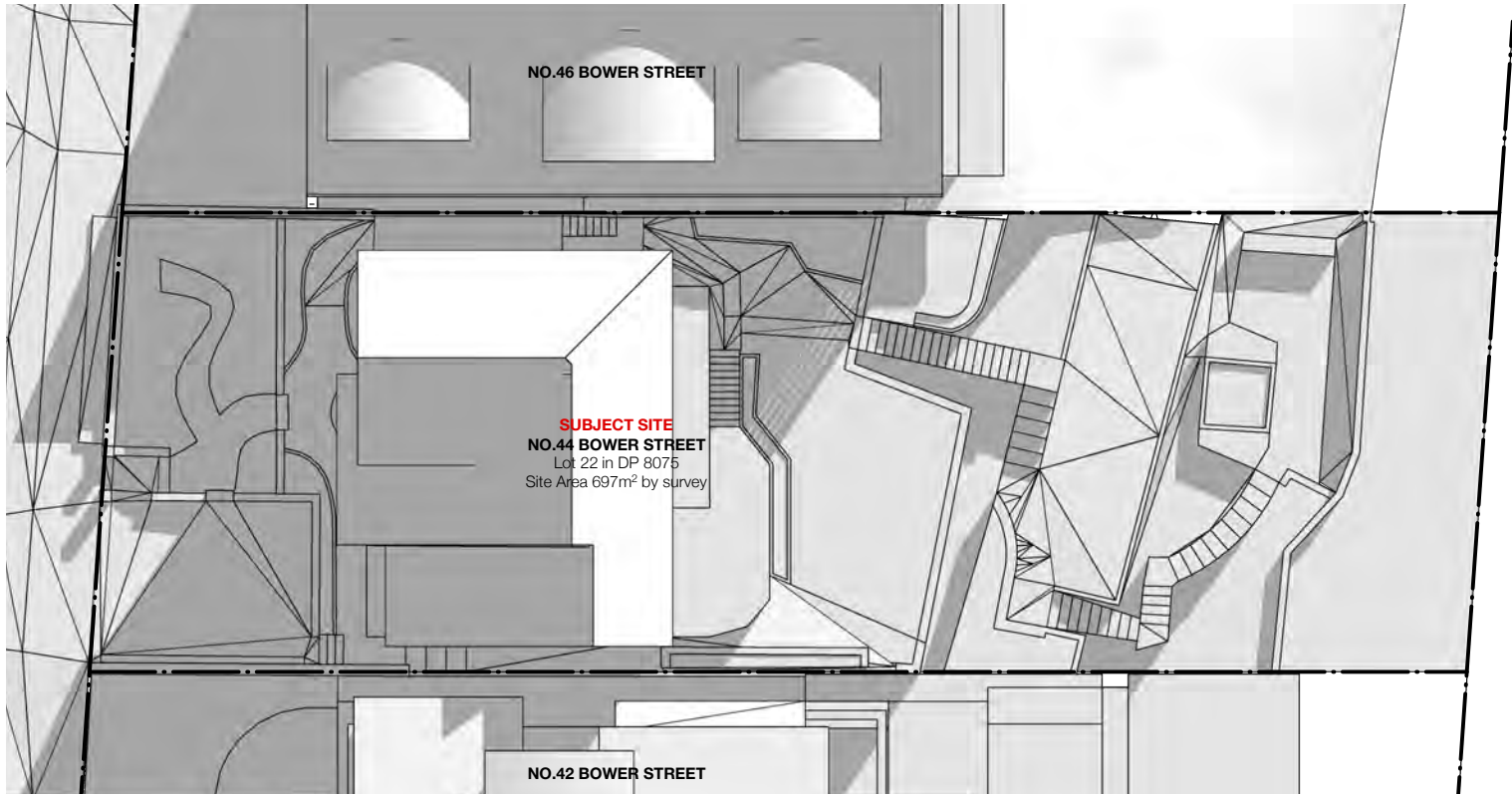
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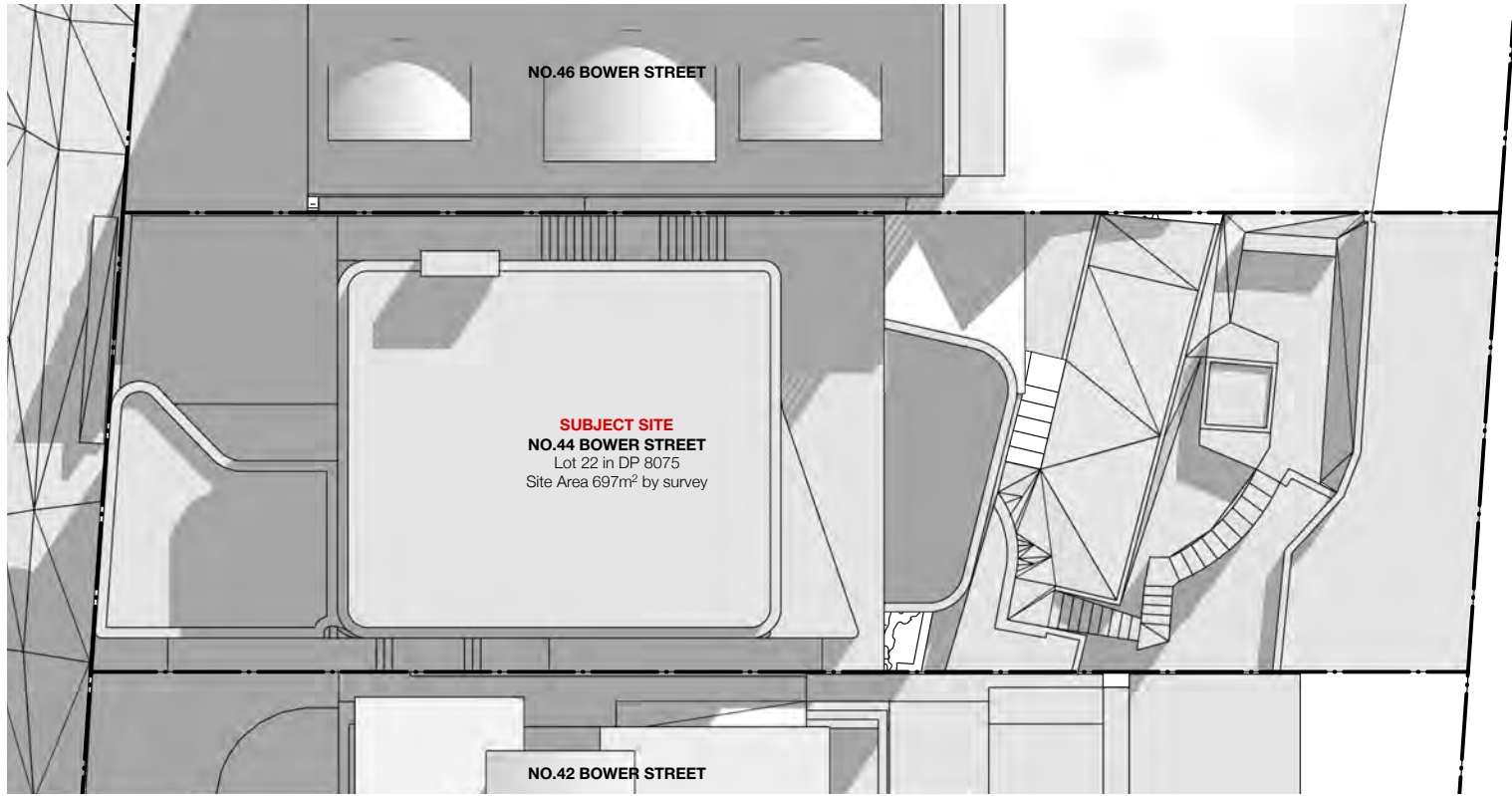
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KEY
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REDUCTION TO SHADOW

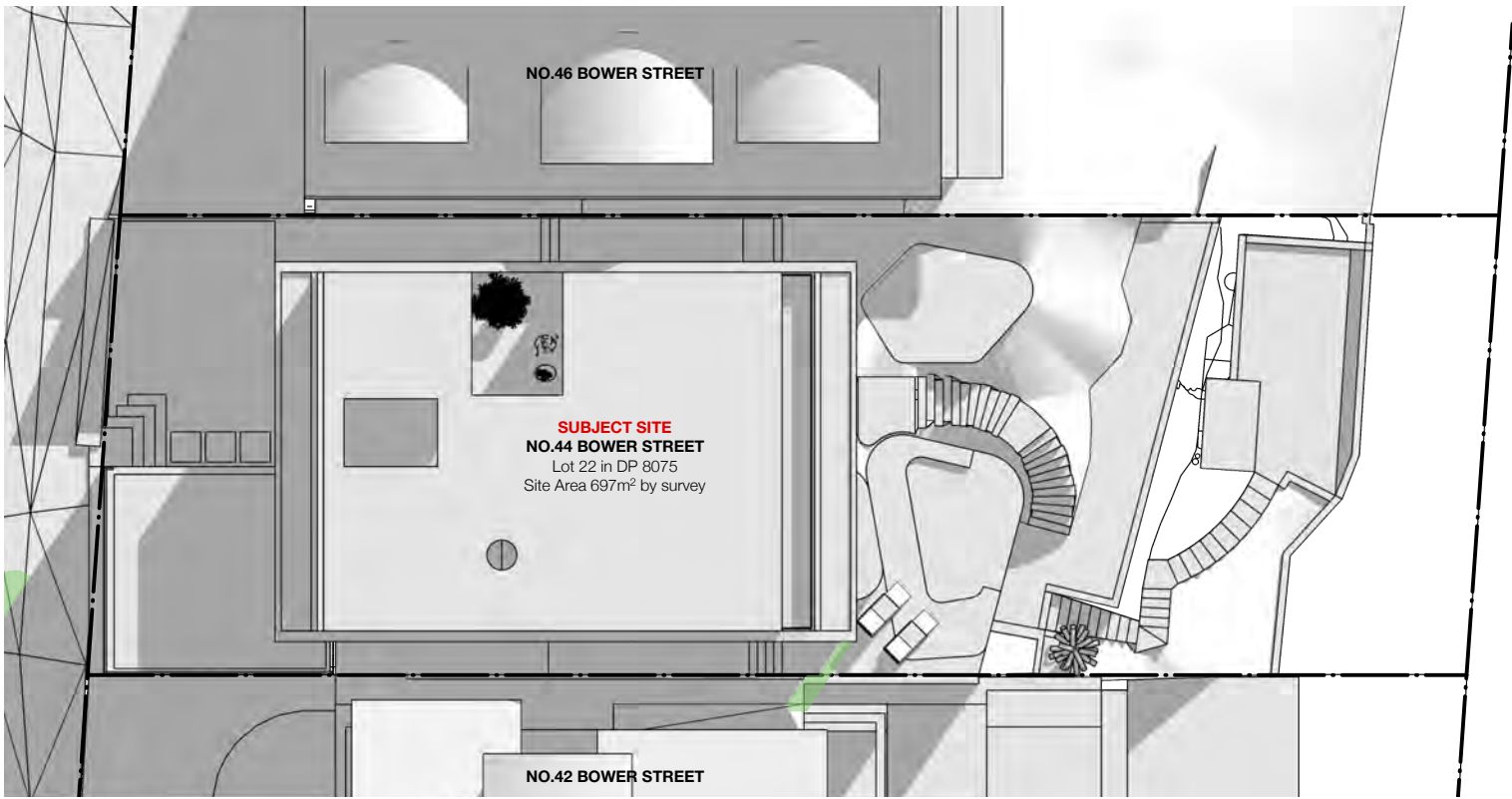




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B SHADOWS APPROVED DA
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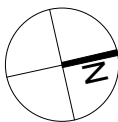


C SHADOWS PROPOSED
Scale: 1:250

KEY

ADDITIONAL SHADOW

REDUCTION TO SHADOW





A SHADOWS EXISTING 9:00AM
NTS



B SHADOWS APPROVED DA 9:00AM
NTS



C SHADOWS PROPOSED 9:00AM
NTS



D SHADOWS EXISTING 12:00PM
NTS



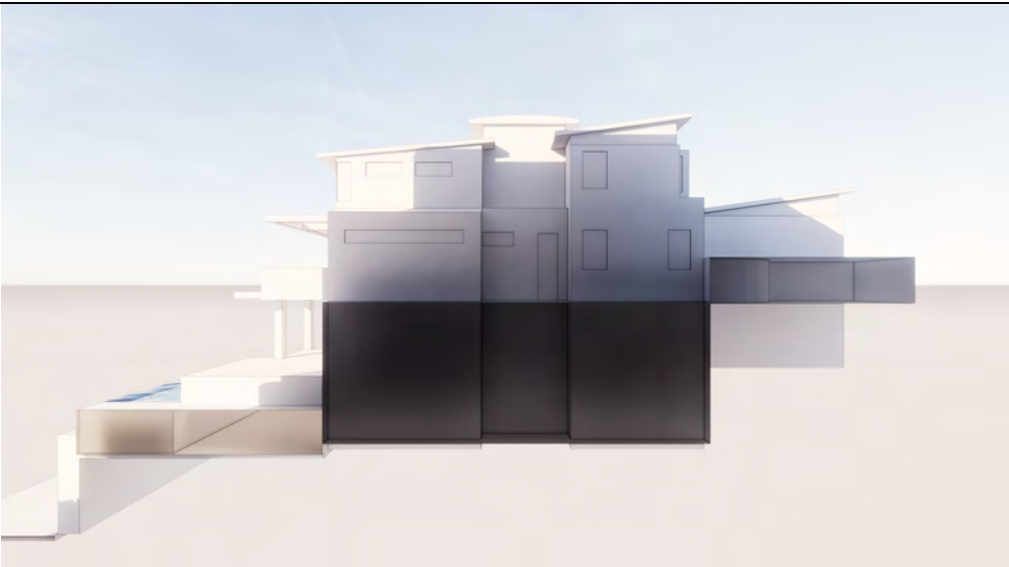
E SHADOWS APPROVED DA 12:00PM
NTS



F SHADOWS PROPOSED 12:00PM
NTS



G SHADOWS EXISTING 3:00PM
NTS



H SHADOWS APPROVED DA 3:00PM
NTS



I SHADOWS PROPOSED 3:00PM
NTS

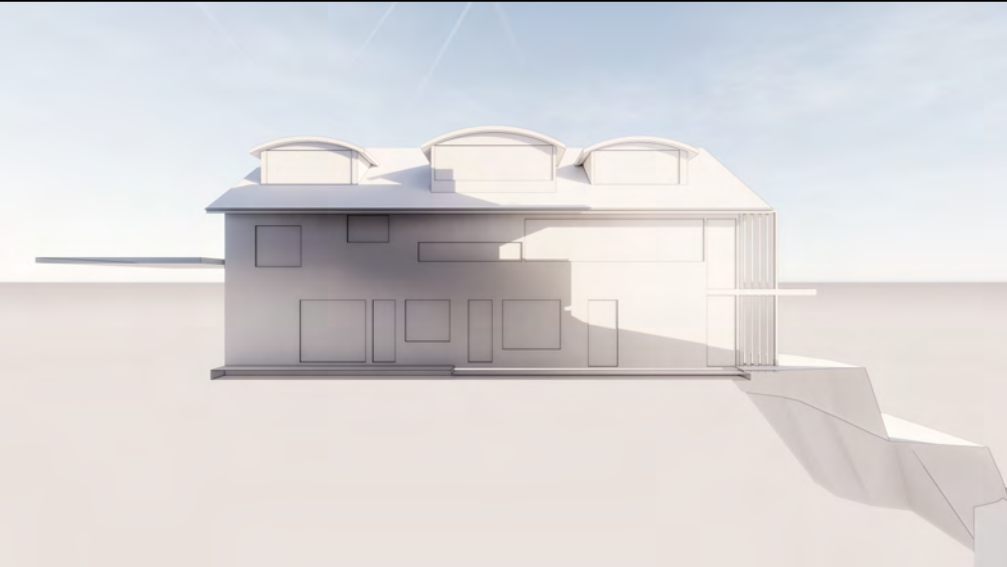
FOR DEVELOPMENT APPLICATION ONLY



A SHADOWS EXISTING 9:00AM
NTS



B SHADOWS APPROVED DA 9:00AM
NTS



C SHADOWS PROPOSED 9:00AM
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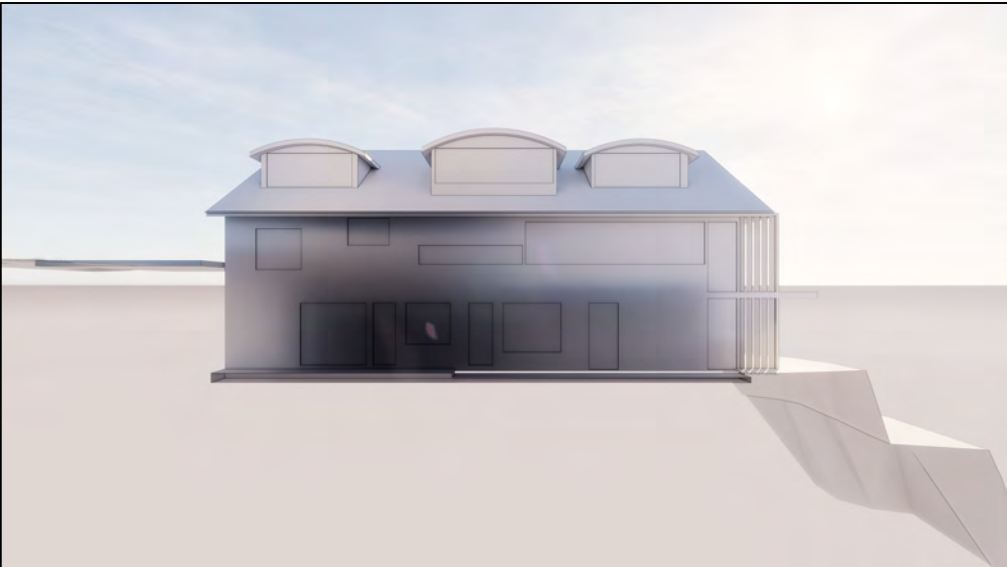
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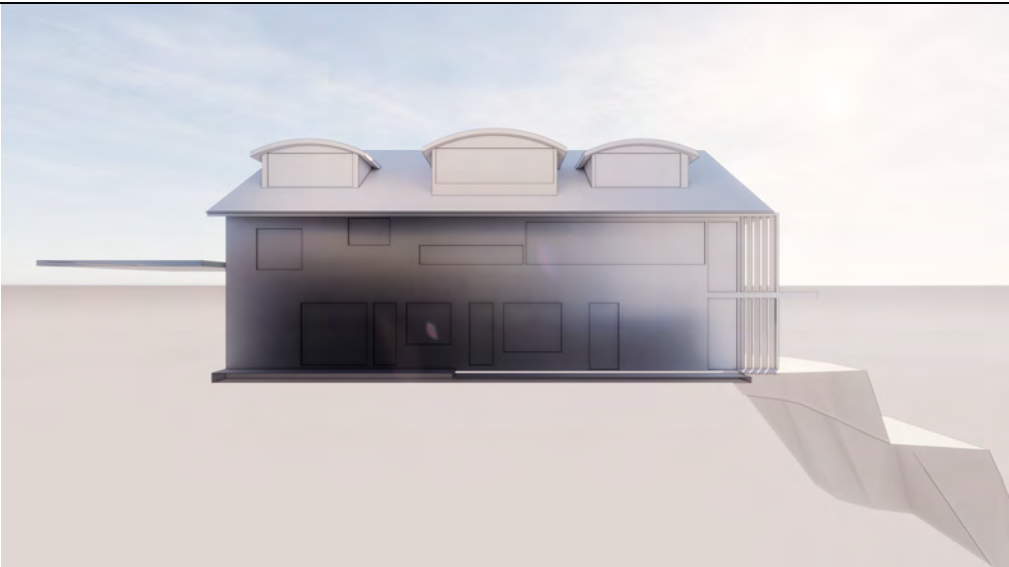
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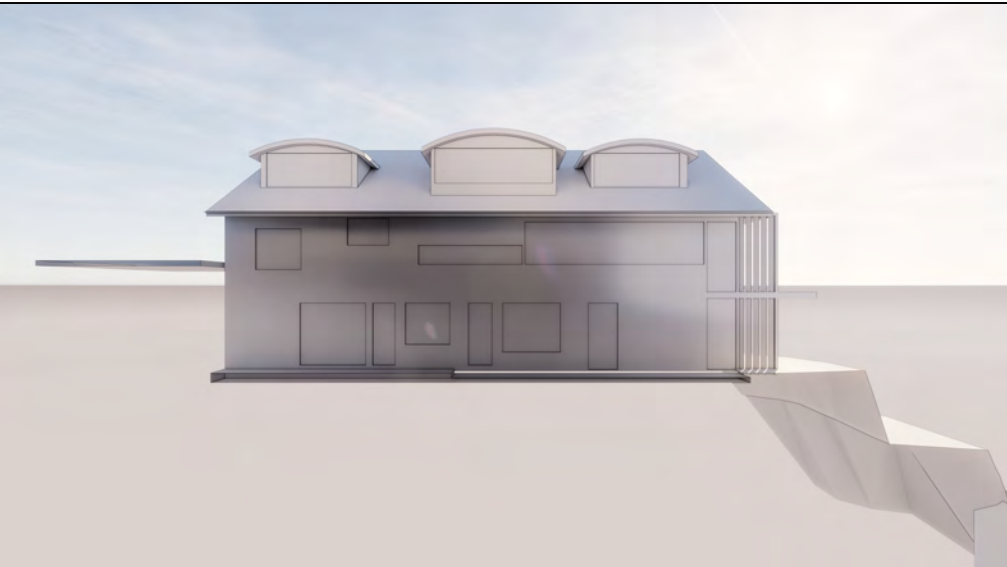
F SHADOWS PROPOSED 12:00PM
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G SHADOWS EXISTING 3:00PM
NTS



H SHADOWS APPROVED DA 3:00PM
NTS



I SHADOWS PROPOSED 3:00PM
NTS

FOR DEVELOPMENT APPLICATION ONLY